

1                                   BEFORE THE  
2                                   ILLINOIS COMMERCE COMMISSION  
3                   IN THE MATTER OF:                                   )  
4                   COMMONWEALTH EDISON COMPANY                                   )  
5                   Petition for approval of a                                   ) No. 00 -0361  
6                   revised decommissioning                                   )  
7                   expense adjustment rider.                                   )  
8   Chicago, Illinois  
9   August 28, 2000  
10  
11                                   Met pursuant to notice at 9:30 a.m.  
12  
13                   BEFORE:  
14                                   MR. PHILLIP CASEY and MR. TERRY HILLIARD,  
15                                   Administrative Law Judges  
16                   APPEARANCES:  
17                                   HOPKINS & SUTTER  
18                                   MR. PAUL HANZLIK and  
19                                   MR. ROBERT FELDMEIER  
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18 SULLIVAN REPORTING COMPANY, by

19 Kristin C. Brajkovich, CSR

20 Michael R. Urbanski, CSR

21 Steven Stefanik, CSR

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1	I N D E X					
2				Re -	Re-	By
3	Witnesses:	Direct	Cross	direct	cross	Judge
4	Thayer	768	772			
5			775			
6			77 8	781		783
7	Callan	786	790			
8			817			
9			837			
10			852			
11			855			
12			857			860
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15					869	
16	Effron	877				874
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19	Berdelle	946				
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26						1130
27				1134		
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29					1140	
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31	E X H I B I T S					
32	Number	For	Identification		InEvidence	
33	Com-ed					
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1 (Whereupon, Edison Exhibit  
2 Nos. 9 and 13 were  
3 marked for identification  
4 as of this date.)  
5 JUDGE CASEY: Pursuant to the authority and  
6 direction of the Illinois Commerce Commission, we  
7 now call Docket No. 00-0361, Commonwealth Edison  
8 Company in its petition for approval of a  
9 revision of decommissioning expense adjustment  
10 rider to take effect on transfer of ComEd  
11 generating stations.  
12 May I have the appearances for the  
13 record, please.  
14 MR. HANZLIK: Paul Hanzlik, John Rogers,  
15 and Bob Feldmeier appearing for Commonwealth  
16 Edison Company.  
17 MR. REVETHIS: Steven G. Revethis and John  
18 C. Feeley, Staff counsel appearing on behalf of  
19 the Staff of the Illinois Commerce Commission,  
20 Mr. Examiners.  
21 MR. TOWNSEND: On behalf of Chicago Area  
22 Industrial and Healthcare Coalition, the law firm

1 of Piper, Marbury, Rudnick & Wolfe by Christopher J.  
2 Townsend and David I. Fein.

3 MR. JOLLY: On behalf of the City of Chicago,  
4 Ronald D. Jolly and Conrad R. Reddick.

5 MR. WARREN: R. Lawrence Warren and Mark G.  
6 Kaminski of the Attorney General's Office on behalf  
7 of the People of the State of Illinois.

8 MR. LEVIN: Mitchell Levin and Leijuana Doss,  
9 Cook County State's Attorney's Office.

10 MR. ROBERTSON: Eric Robertson, Lueders,  
11 Robertson & Konzen on behalf of the Illinois  
12 Industrial Energy Consumers.

13 MR. ROSENBLUM: Daniel Rosenblum, Environmental  
14 Law & Policy Center for the Environmental Law &  
15 Policy Center.

16 MS. NORINGTON: Karin M. Norington for the  
17 Citizens Utility Board.

18 JUDGE CASEY: Let the record reflect that there  
19 are no further appearances. This matter has been  
20 continued from Friday evening for hearing today. It  
21 is my understanding that the line-up of witnesses  
22 today is Mr. Thayer, Callan, Effron, and Berdelle;



1 is that correct.

2 MR. FELDMIEIER: That is correct.

3 JUDGE CASEY: Pursuant to the request of the  
4 Hearing Examiners, if any parties objected to the  
5 testimony of a witness, we requested that they file  
6 written motions. And it is -- we received by hand  
7 delivery this morning a motion of the CITGO  
8 Petroleum and General Mills, Metropolitan Chicago  
9 Healthcare Council, and R.R. donnelly & Company.

10 It is a motion to strike the rebuttal  
11 testimony of Commonwealth Edison witness Jay Thayer.  
12 Mr. Feldmeier, have you received a copy of that  
13 motion.

14 MR. FELDMIEIER: I was handed a copy of the motion  
15 this morning when I arrived, Mr. Hearing Examiner.

16 JUDGE CASEY: Are you prepared to respond to that  
17 motion.

18 MR. FELDMIEIER: Yes, we are.

19 JUDGE CASEY: Mr. Townsend, we have read the  
20 motion, so unless you have anything specifically in  
21 addition to add to it.

22 MR. TOWNSEND: At this point we will allow the

1 motion to stand for itself.

2 JUDGE CASEY: Mr. Feldmeier, would you care to  
3 respond?

4 MR. FELDMEIER: As I understand the motion, given  
5 the limited opportunity I have had to review it, it  
6 seems like the gist of the motion is this is  
7 improper rebuttal testimony and that it does not  
8 respond to any issues raised in the direct testimony  
9 of Staff and intervenors and that it is actually --  
10 I think they use the term additional direct  
11 testimony being submitted by Edison. We would  
12 disagree.

13 Witness Riley on behalf of the Staff and  
14 Witness Stephens and other witnesses have called  
15 into question whether site restoration or  
16 non-radiological decommissioning will be performed  
17 at ComEd's nuclear stations.

18 Mr. Thayer responds to that convention  
19 and discusses his experience in performing  
20 non-radiological decommissioning and discusses why  
21 the Commission does have assurance that work will be  
22 performed. It is directly responsive to direct

1 testimony of Staff and intervenors and is proper  
2 rebuttal.

3 MR. FEIN: While the testimony and the subject  
4 matter of the testimony of Mr. Thayer's rebuttal  
5 testimony addresses a concept non-radiological  
6 decommissioning that has been addressed by a couple  
7 of witnesses in this proceeding, there is no reason  
8 why if the company believed that this evidence was  
9 relevant that it was not filed during the direct  
10 phase of the proceeding.

11 Mr. Thayer provides examples of his  
12 experience in a couple of projects where  
13 non-radiological decommissioning occurred. That is  
14 simply direct testimony that parties have now been  
15 prejudiced because they have not had an opportunity  
16 to respond to that testimony, and, therefore, we  
17 request that portions of  
18 Mr. Thayer's testimony that address -- that don't  
19 address any direct testimony of any other witness be  
20 stricken.

21 We are not seeking to strike the entire  
22 piece of testimony, just the portions that are

1 referenced in the motion. Specifically,  
2 page 2, line 34, through page 8, line 10.

3 MR. FELDMEIER: Edison did put in testimony about  
4 site restoration in its direct case. It put in Mr.  
5 LaGuardia's cost study.

6 The issue was -- became the focal point  
7 of several pieces of testimony by both the Staff and  
8 intervenors. Because the issue had become one of  
9 the primary points that was addressed in the case,  
10 we decided to raise it and to respond to it and give  
11 it the attention that it deserved through Mr.  
12 Thayer's testimony.

13 And that is why the testimony was  
14 submitted as rebuttal testimony and not as direct.

15 I might also add, Mr. Thayer also  
16 testified in the 1999 case concerning his  
17 experiences that are discussed in his testimony  
18 here. That material is in the record in that case.  
19 It has been -- notice of it has been taken.

20 This testimony includes similar testimony  
21 and also directly responds. Including it in the  
22 record here does not prejudice any of the parties

1 and is actually useful for the Commission because  
2 they have Mr. Thayer's experience before them in  
3 response to the Staff and intervenor contentions.

4 MR. FEIN: Brief reply. That testimony might  
5 have been properly presented in the '99 case, but  
6 here the company does not even make a passing  
7 reference to any other witness' testimony. I think  
8 the key portion is where he describes the purpose of  
9 his testimony, to discuss the appropriateness of  
10 non-radiological decommissioning as a component of  
11 nuclear station decommissioning. That is direct  
12 testimony, that is direct evidence. That statement  
13 can't be any clearer.

14 MR. WARREN: Your Honor, could I be heard for a  
15 moment on this. We will join in their motion to  
16 strike that portion of the testimony, and I would  
17 like to point out to the Hearing Examiners that in a  
18 1991 docket, case this Commission, as part of their  
19 order and their findings, they struck some rebuttal  
20 testimony as not being proper rebuttal testimony and  
21 they gave this reasoning in their finding: This  
22 testimony does not pertain to subject matter

1 addressed by UE Witness Bess (phonetic) and there is  
2 no showing that this testimony by Mr. Harban  
3 (phonetic) could not reasonably have been presented  
4 as direct testimony.

5 And that is in Docket No. 91-0522.

6 JUDGE CASEY: All right. You have an opportunity  
7 to respond.

8 MR. ROSENBLUM: Excuse me. May I be heard,  
9 please.

10 JUDGE CASEY: Sure.

11 MR. ROSENBLUM: I would like to speak in  
12 opposition to the motion. The testimony is very  
13 important to respond to the issue that was, in fact,  
14 raised by various parties which suggested strongly  
15 that site restoration would not take place.

16 Mr. Thayer has given good reasons the  
17 Commission should know about as to why site  
18 restoration will take place and why it is very  
19 important to have funding for the site restoration.  
20 I support the inclusion of the evidence in the  
21 record.

22 MR. LEVIN: Mitchell Levin. First of all, we

1 would support the motion, but I just want to point  
2 out that most of this testimony is a repeat from Mr.  
3 Thayer's testimony in the docket in '99, and I think  
4 that is -- that the Commission has taken  
5 administrative notice of that testimony and that has  
6 already been admitted. But for the reasons already  
7 stated, we would support the motion.

8 JUDGE CASEY: Mr. Feldmeier.

9 MR. FELDMEIER: If I could just respond very  
10 briefly. A point was made that no reference is made  
11 to the testimony of Staff and intervenor witnesses  
12 in the portion of the testimony that is the subject  
13 of the motion.

14 I would note that on page 8 there is a  
15 section responding to Staff and intervenor testimony  
16 where Mr. Thayer does refer to specific items of  
17 testimony and states his conclusions. The portion  
18 of his testimony that is subject to the motion is  
19 really his basis for reaching these conclusions and  
20 the foundation for the conclusions, so it is  
21 appropriate for him to have testified as to his  
22 experiences in those sections to give foundation for

1 the conclusions that he wants to give the  
2 Commission.

3 MR. FEIN: As a final reply, his testimony does  
4 not state that that is the basis for his  
5 conclusions. That is simply a misstatement of what  
6 is stated in the witness' testimony, and counsel  
7 correctly notes that page 8 is the only reference to  
8 Staff and intervenor testimony and that portion of  
9 his testimony we are not seeking to strike.

10 MR. FELDMEIER: Examiner, very briefly, if I can  
11 just be heard one last time.

12 JUDGE CASEY: One last time. Go ahead.

13 MR. FELDMEIER: On page 2 Mr. Thayer indicates  
14 that the purpose of his testimony is to respond --  
15 and I am reading off lines 44 through 46 -- respond  
16 to the testimony that has been submitted in this  
17 case which states that there is no assurance that  
18 site restoration work will be performed at ComEd's  
19 nuclear stations.

20 The portions of the testimony that follow  
21 that is the subject of the motion, is that response.  
22 It is the basis of his understanding why this work



1 will be performed. It is perfectly proper rebuttal  
2 testimony.

3 JUDGE CASEY: Okay. The motion to strike the  
4 rebuttal testimony of Edison Witness Jay K. Thayer,  
5 more specifically the testimony beginning on page 2,  
6 line 34, through page 8, line 10, will be denied.

7 Mr. Feldmeier, are you ready to proceed?

8 MR. JOLLY: Before we move on, there was one  
9 other witness scheduling matter that I wanted to  
10 discuss. On Friday, late Friday and on Saturday by  
11 Fed Ex, I received -- as we discussed last week, the  
12 City and CUB had requested documents concerning  
13 certain board meetings that Commonwealth Edison had  
14 regarding life extensions, and there were certain  
15 documents that had been redacted within those sets  
16 of papers.

17 And on Friday we requested unredacted  
18 copies of certain of those pages, and on Friday  
19 night and on Saturday, Edison provided us unredacted  
20 copies of those pages. Some of those pages are  
21 charts that were apparently made that are taken from  
22 slides that were in color, and as a result, these

1 pages really are not that understandable. You know,  
2 in black and white the colors just don't show up, so  
3 we don't understand the charts.

4               So I had a conversation with  
5 Mr. Feldmeier and Mr. Hanzlik this morning, and they  
6 are amenable to having any cross-examination of Mr.  
7 Berdelle concerning those documents that the parties  
8 who have cross-examination of those documents, that  
9 that cross-examination take part tomorrow and that  
10 any other parties who have cross-examination of Mr.  
11 Berdelle concerning other areas that do not involve  
12 those charts, that they would cross examine Mr.  
13 Berdelle today.

14       MR. TOWNSEND: Likewise, Mr. Examiner, we  
15 received copies of those on late Friday, by  
16 messenger on Saturday. Our expert witness is  
17 attempting to take a look at those to assist us with  
18 cross-examination, and we certainly appreciate  
19 Edison's agreement to carry  
20 Mr. Berdelle over until tomorrow in order to allow  
21 us to fully cross-examine him.

22       MR. HANZLIK: If -- and we can do this off the

1 record later. If you just indicate which charts  
2 that you are having trouble reading just so I can  
3 get the specific information for you, I would  
4 appreciate it.

5 MR. FELDMEIER: Just also for the record, the  
6 materials that we provided to opposing counsel are  
7 the materials that we have. We don't have the  
8 colored charts in our possession at that time, and  
9 we do not know whether they exist at this point. So  
10 we have no assurance that we will be able to obtain  
11 those materials for cross-examination.

12 MR. JOLLY: Well, even if they can't provide  
13 them, as long as we can talk to Mr. Berdelle. They  
14 are actually taken from a presentation made by Mr.  
15 McDonald, to have somebody explain to us what the --

16 JUDGE CASEY: Is this explanation going to take  
17 place off the record.

18 MR. JOLLY: That is what we would prefer. I  
19 would rather not cross-examine him and ask him  
20 questions.

21 JUDGE CASEY: So I got this right, are we going  
22 to have cross-examination at all for

1 Mr. Berdelle today?

2 MR. HANZLIK: Yes. It is just this limited area  
3 that we are reserving until tomorrow, but I will  
4 talk with Mr. Berdelle and when he comes in this  
5 afternoon, he can answer the questions that they  
6 have off the record.

7 JUDGE CASEY: Okay. Is there anything else  
8 before we begin testimony?

9 Mr. Thayer.

10 (Witness sworn.)

11 JUDGE CASEY: Mr. Feldmeier, proceed.

12 JAY K. THAYER,  
13 called as a witness herein, having been first duly  
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MR. FELDMEIER:

18 Q. Mr. Thayer, could you state your full name  
19 and spell it for the benefit of the court reporter?

20 A. My name is Jay K. Thayer, T-h-a-y-e-r.

21 Q. Mr. Thayer, you have before you a copy of a  
22 document that has been marked Edison Exhibit No. 13.

1 It consists of eight printed pages of questions and  
2 answers, an Exhibit A that consists of your resume  
3 and an Exhibit B that consists of 19 photographs.

4 Is this the rebuttal testimony that you  
5 have prepared for Commonwealth Edison Company in  
6 this case?

7 A. Yes, that's correct.

8 Q. And do you have any changes that you would  
9 like to make to your rebuttal testimony since it has  
10 been circulated to the parties?

11 A. Yes, I do. On page 1, my business address  
12 has changed. I believe it is reflected accurately  
13 in the copy that has been distributed this morning,  
14 and on Attachment B, the photographs that you  
15 referred to, photographs 10 through 19 were  
16 previously provided as black and white copies.  
17 Those have been updated in the most recent copy and  
18 are provided in color for additional clarity.

19 Q. Mr. Thayer, if I were to ask you the same  
20 questions that are contained on pages 1 through 8 of  
21 Edison Exhibit 13 this morning, would you give the  
22 same answers that are indicated in the document

1 before you?

2 A. Yes, I would.

3 Q. And is Exhibit A in the document before you  
4 the correct copy of the Exhibit A that you submitted  
5 in support of your rebuttal testimony?

6 A. Yes, it is.

7 Q. And, finally, are the photographs attached  
8 as Exhibit B correct copies of the photographs that  
9 you also submitted in support of your rebuttal  
10 testimony?

11 A. Yes, they are.

12 Q. With that, we would have no further direct  
13 testimony from Mr. Thayer. We would move for the  
14 admission of Edison Exhibit 13 along with exhibits A  
15 and B and make Mr. Thayer available for  
16 cross-examination?

17 MR. ROBERTSON: Mr. Thayer spoke so softly I  
18 didn't hear the changes he made.

19 JUDGE CASEY: He changed his address and he  
20 provided color photographs. That is it in  
21 substance.

22 THE WITNESS: Yes.

1 JUDGE CASEY: Mr. Feldmeier, please double-check  
2 to make sure that microphone is working okay. Mr.  
3 Thayer, please try to speak into that microphone  
4 because we have people throughout the room that  
5 really want to hear what you have to say.

6 JUDGE HILLIARD: Before we start, could we have  
7 an estimate for time for cross-examination?

8 MR. REVETHIS: Staff has no cross.

9 MR. FEIN: Five minutes.

10 JUDGE HILLIARD: Anybody else?

11 MR. KAMINSKI: AG maybe five minutes, ten  
12 minutes.

13 MR. ROBERTSON: Five, ten minutes.

14 JUDGE HILLIARD: Anybody else? Okay. Who wants  
15 to go first?

16 JUDGE CASEY: Well, the prefiled -- or the  
17 prepared testimony will be admitted.

18 (Whereupon, Edison  
19 Exhibit No. 13 was  
20 marked for identification  
21 as of this date.)

22 JUDGE CASEY: Mr. Fein, do you want to proceed?

1 MR. FEIN: Thank you.

2 CROSS -EXAMINATION

3 BY

4 MR. FEIN:

5 Q. Good morning, Mr. Thayer.

6 A. Good morning.

7 Q. Is it correct that current Nuclear  
8 Regulatory Commission regulations do not require  
9 licensees to remove non-radiological structures and  
10 components?

11 A. That is correct.

12 Q. Now, on page 4 of your testimony, on my copy  
13 it is line -- your answer that begins on line 12,  
14 you reference decommissioning plans. Do you see  
15 that reference there?

16 A. Yes.

17 Q. The decommissioning plans that you refer to,  
18 is it correct that the actual decommissioning plans  
19 are developed post-shutdown of a nuclear plant?

20 A. In my experience, there is a decommissioning  
21 plan pre-shutdown which describes in general the  
22 decommissioning sequence which will take place.



1 And, again, there is a more detailed plan which is  
2 developed once the unit is shut down and  
3 decommissioning becomes a near term reality.

4 Q. And that more formal or detailed plan that  
5 you mentioned, that is something that is required by  
6 Nuclear Regulatory Commission decommissioning rules  
7 and regulations?

8 A. Yes, it is. It is formally call the  
9 post-shutdown decommissioning activities report,  
10 PSDAR in regulation.

11 Q. Have you conducted any study or analysis for  
12 submission in this proceeding whether Commonwealth  
13 Edison has any plans for a combined-cycle generating  
14 facility on any of its nuclear sites?

15 A. No, I haven't.

16 Q. Have you performed a study or analysis for  
17 submission to the Commission in this proceeding that  
18 non-radiological decommissioning will be performed  
19 by Commonwealth Edison at all of its nuclear  
20 stations?

21 A. I'm sorry. Would you repeat the first part  
22 of that.

1 Q. Sure. Have you performed a study or  
2 analysis that you have submitted to the Commission  
3 in this proceeding that non-radiological  
4 decommissioning will be performed by Commonwealth  
5 Edison at all of its nuclear stations?

6 A. No, I haven't.

7 Q. And at this time, you have not submitted to  
8 the Commission a decommissioning plan specifically  
9 detailing the planned non-radiological or site  
10 restoration plans for any of Commonwealth Edison's  
11 nuclear stations?

12 A. No, I haven't.

13 MR. FEIN: Nothing further.

14 JUDGE HILLIARD: AG.

15 JUDGE CASEY: Mr. Thayer, while the Attorney  
16 General is getting ready, Mr. Fein asked you if  
17 there was an NRC requirement for a post-shutdown  
18 plan for site restoration and you indicated, yes,  
19 there was. Is that accurate?

20 THE WITNESS: No, I don't -- he asked me if there  
21 was a post-shutdown requirement on the  
22 decommissioning plan, and I answer yes to that.

1                   I did not mean to infer that there was a  
2 post-shutdown requirement for a site restoration  
3 plan. Was that clear?

4       MR. FEIN: Yes.

5       JUDGE CASEY: All right.

6                   CROSS -EXAMINATION

7                   BY

8                   MR. KAMINSKI:

9       Q. Hello, Mr. Thayer. Mark Kaminski for the  
10 Attorney General's Office. I have a couple  
11 questions for you.

12                  You testify on page 4 of your direct that  
13 removal of radioactive and hazardous materials from  
14 buildings and structures is a destructive process,  
15 correct?

16       A. That's correct.

17       Q. And on page 8, line 20, you base this on  
18 your experience of decommissioning the Yankee plants  
19 on the East Coast, correct?

20       A. That is correct.

21       Q. Have you developed any studies concerning  
22 non-radiological decommissioning of nuclear plants

1 for Illinois?

2 A. No, I have not.

3 Q. Have you inspected any Illinois nuclear  
4 plants for decommissioning purposes?

5 A. Yes, I have.

6 Q. Did those include -- and have you  
7 done -- in those inspections, did you do any studies  
8 regarding the destructive process that would be  
9 involved in site decommissioning? What I mean by  
10 that is the site restoration.

11 A. The inspections that I performed of the  
12 Illinois units were, No. 1 at Zion, and No. 2 at  
13 Dresden station. And the purposes of those  
14 inspections was to draw correlations between  
15 decommissioning practices that I am familiar with,  
16 including radiological decommissioning and including  
17 site restoration to see if there was anything unique  
18 or different about the Illinois units, those two  
19 Illinois units that would invalidate my assumptions  
20 and my experience base regarding decommissioning and  
21 site restoration of nuclear plants in other parts of  
22 the country.

1       Q.    Thank you.  The destruction that you  
2 testified regarding in the Yankee plants, did you  
3 see that kind of destruction in the Illinois plants?

4       A.    No, because decommissioning has not  
5 proceeded to the extent that we have taken  
6 decommissioning in the Yankee plants that I have  
7 referred to.

8       Q.    Thank you.  So you really can't tell how  
9 much destruction is going to be involved until it is  
10 actually done, correct?

11      A.    No, that is not correct.  The technology for  
12 decommissioning, the practices employed for material  
13 removal, commodity removal in power plants is pretty  
14 much a standard technology.  It is used in the  
15 commercial nuclear power plants.  It is used by the  
16 Department of Defense in their nuclear  
17 decommissioning.  It is used by the Department of  
18 Energy.  It is used by universities, test reactors,  
19 the United States Navy.  The methods and  
20 technologies employed for nuclear decommissioning  
21 are not unique to the commercial nuclear power  
22 industry.

1 Q. Let's talk about technology. Do you know  
2 whether any new decommissioning technology will be  
3 developed in the next 30 years?

4 A. Not specifically, no.

5 Q. And you don't know whether these new  
6 technologies would be more or less destructive in  
7 their extraction of the radiological materials?

8 A. I can only use my database in the last eight  
9 to ten years and the development of technology  
10 since.

11 Q. So you don't know?

12 A. Not specifically, no.

13 Q. Thank you. No further questions.

14 CROSS-EXAMINATION

15 BY

16 MR. ROBERTSON:

17 Q. Good morning, Mr. Thayer.

18 A. Good morning.

19 Q. My name is Eric Robertson. I represent the  
20 Illinois Industrial Energy Consumers.

21 I would like to reference page 7, lines  
22 10 through 11 of your testimony. Do you know of any

1 combined-cycle plants that you have been constructed  
2 on unused portions of nuclear sites to date?

3 A. Actually constructed, no.

4 Q. Do you know of any that are being planned?

5 A. Planned from -- I know of feasibility  
6 studies. Of actual construction plans, no, I don't.

7 Q. What is the basis for your statement here?

8 A. The basis for my statement there is the  
9 discussion above of two studies that I was involved  
10 in where a nuclear plant was reviewed for reuse in a  
11 possible power generation scenario.

12 Q. Now, you also discuss the Connecticut  
13 Yankee, Maine Yankee, and Yankee Rowe  
14 decommissioning projects; is that correct?

15 A. That's correct.

16 Q. Are any of those completed?

17 A. No, they are not.

18 Q. Who had jurisdiction over the  
19 decommissioning of those plants, other than the NRC?

20 A. By jurisdiction you mean regulatory bodies?

21 Q. Yes.

22 A. The Environmental Protection Agency Region 1

1 has been involved. For the plant that I am most  
2 familiar with in Massachusetts, the Massachusetts  
3 Department of Environmental Protection, the  
4 Massachusetts Department of Labor and Industries,  
5 the Massachusetts Department of Public Health, the  
6 Massachusetts Attorney General's Office, were the  
7 primary agencies that we interfaced with in that  
8 decommissioning project.

9 Q. Do you know of any specific regulatory or  
10 statutory language that required those units to be  
11 -- for non-radiological decommissioning to take  
12 place?

13 A. No, I do not.

14 MR. ROBERTSON: I have no further questions.

15 JUDGE HILLIARD: Could you tell us what -- and  
16 this may be in your testimony -- what combined-cycle  
17 means.

18 THE WITNESS: Combined-cycle is a technical term.  
19 It refers to a particular type of electric  
20 generating plant that is being built today. It  
21 involves the combination of combustion turbines  
22 usually fueled with natural gas, and the exhaust



1 from those combustion turbines is used in -- the  
2 heat in that exhaust is used in boilers.

3           And then there is the second part of the  
4 cycle, which that heat is then used to turn steam  
5 turbines, so you have combustion turbines and steam  
6 turbines working in a combined-cycle, hence the  
7 name. That is the modern, high-efficiency power  
8 plants that are being built today.

9       JUDGE CASEY: Is there any additional cross?  
10 Redirect.

11       MR. FELDMEIER: Very briefly.

12           REDIRECT EXAMINATION

13           BY

14           MR. FELDMEIER:

15       Q.   Mr. Thayer, Mr. Kaminski asked you a  
16 question about your visits to Commonwealth Edison's  
17 nuclear power stations, particularly Dresden and  
18 Zion stations. Do you recall those questions?

19       A.   Yes, I do.

20       Q.   And I believe you stated the purpose of your  
21 inspection of those stations was to determine  
22 whether your conclusions, based on your experiences

1 at the Yankee plants would be valid for ComEd  
2 stations; is that correct?

3 A. That's correct.

4 Q. Could you tell us what conclusions you  
5 reached after visiting Edison's plants?

6 A. When I visited those plants, I looked at the  
7 general plant layout. Basically, the  
8 decommissioning process is a reverse of the  
9 construction process, so you look for things like  
10 site access, heavy equipment access, access to  
11 buildings, methods of construction, materials of  
12 construction, types of coatings that are used in  
13 internal buildings, personnel access because  
14 decommissioning is a very labor intensive process.  
15 It is basically a lot of people working to remove  
16 this equipment. This is not a -- it is not done by  
17 remote control. It is not done by -- it is not a  
18 very high technology business. It is very labor  
19 intensive.

20 So I looked at the site and the buildings  
21 and those power plants for those aspects, and I came  
22 to the conclusion that they were generally similar

1 to other facilities that I had both visited and had  
2 decommissioning experience with.

3 Q. Did you conclude that the conclusions you  
4 had reach, based on your experiences at the Yankee  
5 plants, were applicable to Edison's situation?

6 A. Yes, I did.

7 MR. FELDMER: We have nothing further.

8 JUDGE HILLIARD: Recross.

9 RE CROSS - EXAMINATION

10 BY

11 MR. WARREN:

12 Q. Just one question, maybe two.

13 Mr. Thayer, when you did those  
14 inspections in Illinois to determine that it was the  
15 same type of process that was going to be -- that  
16 you had seen back East in the Yankee stations, it is  
17 true, isn't it, that you did not make any  
18 determination as to the damage to the structure that  
19 would occur at the Illinois -- any Illinois plants  
20 due to the decommissioning process? That is true,  
21 isn't it?

22 A. No, it is not really because --

1 Q. Okay. All right. Let me ask you this.

2 In order to determine the damage to a  
3 structure that has taken place as a result of  
4 removing the radiological contamination, it has to  
5 actually be done first, doesn't it? I mean,  
6 wouldn't you agree with that?

7 A. No, I would not agree with that.

8 Q. You are telling me that you can tell what  
9 damage is actually being done to the structure  
10 before the removal process takes place?

11 A. You can project, based on a review of the  
12 equipment in a particular room or a building. You  
13 look at the equipment, you look at piping, you look  
14 at the material that has to be removed from that  
15 room. You look at particulars regarding surfaces on  
16 the building, paint, concrete surfaces that may have  
17 to be removed, and you can make a pretty fair  
18 assessment of the end state of that building when it  
19 becomes or when it is declared radiologically clean.

20 Q. So it is speculation -- at this point until  
21 it actually happens, it is speculation. Thank you?

22 MR. FELDMEIER: Objection, mischaracterizing his

1 testimony.

2 JUDGE HILLIARD: Is that a question.

3 MR. WARREN: I will withdraw it.

4 JUDGE CASEY: Any re-redirect?

5 MR. FELDMEIER: No.

6 JUDGE CASEY: The witness is excused.

7 MR. FELDMEIER: ComEd's next witness is Joseph  
8 Callan.

9 Before we begin, if we could get some  
10 estimates of cross-examination. This is going a  
11 little quicker than we had thought, and we have  
12 preparations for Mr. Efron that are underway.

13 JUDGE HILLIARD: Do you have estimates for  
14 cross-examination?

15 MR. REVETHIS: We may have nothing for this  
16 witness.

17 JUDGE CASEY: You may have none?

18 MR. REVETHIS: Well, we would like others to go  
19 first. No as of now.

20 JUDGE HILLIARD: Mr. Fein?

21 MR. FEIN: I would estimate 20 minutes.

22 JUDGE HILLIARD: Mr. Robertson.

1 MR. ROBERTSON: 15.

2 JUDGE HILLIARD: State's Attorney.

3 MR. LEVIN: We would have 15 minutes to a half

4 hour.

5 JUDGE HILLIARD: City.

6 MR. JOLLY: None.

7 MS. NORINGTON: We may have five to ten minutes.

8 We may have nothing.

9 JUDGE HILLIARD: I did not hear the last part.

10 MS. NORINGTON: We may have five to ten minutes.

11 We may have nothing.

12 MR. HILLIARD: AG, nothing.

13 MR. ROSENBLUM: I have none for ELPC.

14 JUDGE CASEY: Please stand to be sworn.

15 (Witness sworn.)

16 JUDGE CASEY: Mr. Feldmeier.

17 LEONARD JOSEPH CALLAN,

18 called as a witness herein, having been first duly

19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY

22 MR. FELDMEIER:

1 Q. Mr. Callan, could you state your complete  
2 name and spell it for the benefit of the court  
3 reporter.

4 A. Lenoard Joseph Callan, C-a-l-l-a-n.

5 Q. Mr. Callan, do you have before you a  
6 document that has been marked as Commonwealth Edison  
7 Exhibit 9?

8 A. I do.

9 Q. And is that the rebuttal testimony that you  
10 have prepared on behalf of Commonwealth Edison  
11 Company in connection with this proceeding?

12 A. It is.

13 Q. Do you also have in front of you  
14 Commonwealth Edison Exhibit 14?

15 A. I do.

16 Q. Drawing your attention to the first two  
17 responses of that exhibit, have you reviewed the  
18 responses -- the response to Question No. 2 and the  
19 response to Question No. 1 to the extent of the  
20 first paragraph and the first two sentences of the  
21 second paragraph?

22 A. I do.

1 Q. If I were to ask you the same questions that  
2 are contained in Edison Exhibit No. 9 this morning ,  
3 would you provide to me the same responses that are  
4 contained in that exhibit?

5 A. I would.

6 Q. And if I were to ask you the same questions  
7 that are listed in Requests No. 1 and 2 of ComEd  
8 Exhibit No. 14, would you provide for me the  
9 response to Request No. 1, consisting of the first  
10 paragraph and the first two sentences of the second  
11 paragraph and the complete response to Request No.  
12 2?

13 A. I would.

14 MR. FEIN: Counsel, could you identify Exhibit  
15 14, please.

16 MR. FELDMEIER: These are ComEd's responses to  
17 the Hearing Examiner questions 1 through 9 that were  
18 served last week, I believe. After they were  
19 served, we were asked to put these in the record in  
20 testimony form. We began with Mr. LaGuardia who put  
21 in the responses to 7 and 8 with one retraction.

22 And with Mr. Callan today, we will



1 continue that process. For plans purposes,  
2 Mr. Berdelle will sponsor the remainder of the  
3 responses that are not in evidence by the time he  
4 takes the stand.

5               With that, we would move for the  
6 admission of Commonwealth Edison Exhibit No. 9, the  
7 portions of ComEd Exhibit No. 14 that I have just  
8 referred to, and indicate that Mr. Callan is  
9 available for cross-examination.

10       JUDGE CASEY: Specifically, Mr. Callan is  
11 addressing in Exhibit No. 14, Questions 1 and 2?

12       MR. FELDMEIER: Question No. 2. Question  
13 No. 1, first paragraph, first two sentences of the  
14 second paragraph.

15               Mr. Berdelle will address the remainder  
16 of that paragraph when he takes the stand.

17       JUDGE CASEY: Mr. Feldmeier, one more time so I  
18 can get this correct. First paragraph.

19       MR. FELDMEIER: And the first two sentences of  
20 the second paragraph for the response to Request No.  
21 1. The response to Request No. 2 in its entirety.

22       JUDGE CASEY: Okay. Those will be admitted

1 subject to cross.

2 (Whereupon, Edison  
3 Exhibit Nos. 9 and a portion  
4 of 14 were marked  
5 for identification  
6 as of this date.)

7 JUDGE HILLIARD: Mr. Fein, I think since you are  
8 there, why don't you commence.

9 MR. FEIN: Okay.

10 CROSS-EXAMINATION

11 BY

12 MR. FEIN:

13 Q. Good morning, Mr. Callan.

14 A. Good morning.

15 Q. How many United States nuclear units have  
16 applied for license extensions to date?

17 A. The last information I have -- and this is  
18 obviously a moving target. It changes week by week  
19 -- is that in addition to the two that were  
20 approved, there is two applications that have been  
21 received by the NRC and several more, of course,  
22 that -- licensees or utilities that are showing

1 interest.

2 Q. Were any of these plants boiling water  
3 reactor or BWR plants?

4 A. These plants that you are referring to,  
5 plants that have applications submitted?

6 Q. Yes, the ones you just referenced?

7 A. Yes. My understanding is that one of the  
8 utilities that has submitted an application is the  
9 Hatch Plant Units 1 and 2 operated by Southern  
10 Company and Hatch is a boiling water reactor.

11 Q. And I think you just testified that of the  
12 four that you have now mentioned, two have been  
13 approved, two are recent applications? Just so the  
14 record is clear?

15 A. Yes, that is my understanding.

16 Q. Now, in your testimony that you submitted  
17 here in this proceeding, you have not presented any  
18 analysis or study regarding the percentage of  
19 likelihood that a request for a license extension  
20 would be made by the Commonwealth Edison, have you?

21 A. No, nor would I ever. That does not lend  
22 itself to that kind of calculation, in my view.

1 Q. Okay. And you have not presented any  
2 analysis regarding percentage of likelihood that if  
3 such a request was made that, in fact, it would be  
4 granted by the NRC?

5 A. I have not and, again, nor would I ever. It  
6 does not lend itself to that type of analysis.

7 MR. FELDMEIER: I hate to interrupt. Just for  
8 clarity purposes, when we are talking about the  
9 application to the NRC, we are talking about license  
10 renewal as opposed to license extension?

11 MR. FEIN: License renewal, correct.

12 THE WITNESS: That is an important distinction.

13 BY MR. FEIN:

14 Q. And, Mr. Callan, is it your understanding  
15 that Commonwealth Edison's petition in this  
16 proceeding assumes that no license extensions will  
17 be sought by the company?

18 A. I am unaware of Commonwealth Edison's  
19 presumptions in that regard. I just don't know  
20 whether they assume or don't assume.

21 Q. Would you agree that license extensions  
22 offer a utility the option to extend a nuclear

1 plant's life?

2 A. Well, I think that is a very good way to  
3 characterize that you just did. It does provide the  
4 option to extend the life up to 20 years.

5 Q. And would you agree that the option has  
6 value even if not ultimately exercised?

7 A. I don't agree or disagree. I am not sure  
8 what you mean by the option has value.

9 Q. Let me try to explain and see if you can  
10 answer that question. Do you believe that having --  
11 a utility having additional flexibility to choose to  
12 extend the life of a plant has some value to the  
13 utility?

14 A. You are speaking of monetary value?

15 Q. Monetary, strategic. Do you think it has  
16 any value?

17 A. I think there is value, yes. I am not sure  
18 to what extent it is of monetary or commercial  
19 value, but I think there is value. I could think of  
20 several examples of how it would add value, yes.

21 Q. What would be some of those examples?

22 A. Well, one that comes to mind is for a plant

1 that is nearing the end of life, if they have that  
2 option available, I think it makes it that much  
3 easier to recruit and retain experienced and  
4 talented staff. It provides them a ray of hope, if  
5 you will, that they otherwise would not have  
6 perhaps. So you minimize staff defections. That is  
7 a very important value.

8 Q. Any others that come to mind?

9 A. I would have to think about that. That is  
10 an interesting question that I have not really  
11 reflected on, but that is the most obvious one that  
12 I -- from an NRC perspective, that is one that  
13 factors importantly.

14 Q. Now, you have not prepared an analysis or  
15 study for submission in this proceeding of the cost  
16 to Commonwealth Edison for seeking license -- for  
17 the license renewal process, if it so chose?

18 A. I have not.

19 Q. And at page 8 of your testimony, lines 160  
20 and 161, you discuss some of the additional steps  
21 that the NRC has taken to promote greater certainty  
22 and predictability in the license renewal process.

1           Could you explain specifically what the  
2 NRC has done that you reference in that portion?

3       A.   Well, there is really two areas where the  
4 NRC focused its attention to improve the process.  
5 One was to make the process more timely. In other  
6 words, to reduce the amount of time that it would  
7 take for a utility to go through the process.

8           And with the process success of the two  
9 first plants, the NRC has demonstrated that it can,  
10 in fact, deliver a result, an answer in a reasonable  
11 amount of time. That was very important.

12          The second area, equally important, is --  
13 was the NRC's commitment to the industry and to  
14 Congress to provide a more disciplined process, to  
15 ensure that the process reflected the Commissioners'  
16 desires, and to restrict or to minimize the amount  
17 of Staff discretion in terms to broaden the scope  
18 and broaden the issues beyond that which the  
19 Commission had intended.

20          So what the NRC has done, at least for  
21 the first two plants, is to provide a timely,  
22 disciplined process.

1                   Now, on the other hand, what the NRC  
2 commissioners could not do, of course, was to  
3 provide any great assurance to the industry that the  
4 technical issues would be any less difficult to  
5 resolve or any less uncertain.

6                   So the improvements, the enhancements  
7 were strictly in the regulatory process, not in the  
8 technical arena.

9       Q.   Speaking of the technical arena, and you  
10 discuss that in that same answer in your testimony,  
11 you have not performed any analysis to determine the  
12 likelihood of a technical safety issue arising  
13 during any potential license renewal review of  
14 Commonwealth Edison's plants, have you?

15      A.   No, I have not, and, again, I have to say,  
16 nor would I ever. It is not something that I think  
17 is doable to quantify that uncertainty to that  
18 degree.

19      Q.   Now, you testified that it is really just  
20 too soon to tell how many plants will actually  
21 obtain renewed licenses and, if so, choose to  
22 continue to operate the plants through the period of



1 extended operation; is that right?

2 A. That's correct.

3 Q. Now, is it your testimony that the  
4 Commission should ignore the possibility of license  
5 extension?

6 A. License extension is a reality in the  
7 industry. You can't ignore it.

8 Q. Are you aware whether the company has, in  
9 fact, decided to seek any license extensions?

10 A. I am unaware whether or not the company has  
11 made a decision to proceed with an application. I  
12 am aware that the company is considering, as many  
13 utilities are considering the process, but I am not  
14 sure whether are or not they have committed to  
15 apply.

16 Q. Should the Commission assume that none of  
17 the plants will receive license extensions?

18 A. You are talking about the Commonwealth  
19 plants?

20 Q. Yes.

21 A. I don't think that -- again, consistent with  
22 my earlier answers, this is not an area that I would

1 predict -- make any predictions nor would I suggest  
2 that the Commission make predictions about outcomes.

3 Q. So would you agree or would you not agree  
4 that the Commission should assume that Commonwealth  
5 Edison will not seek license extensions for any of  
6 its plants?

7 A. There was so many negatives there, I am not  
8 sure.

9 MR. FELDMEIER: One moment. I am going to object  
10 to that question. I think you change the focus of  
11 your question. I think your original question was  
12 based on license renewal being granted and then your  
13 follow-up question was based on application, so I  
14 think it is a little confusing at this point.

15 BY MR. FEIN:

16 Q. Let me restate the question. It was -- that  
17 is why I changed the phrase of the question to ask  
18 whether you agreed. I did not intend to confuse  
19 you.

20 Is it your testimony that the Commission  
21 should assume that Commonwealth Edison will not seek  
22 license extensions for any of its nuclear

1 facilities?

2 A. In my view, the Illinois Commerce Commission  
3 should not make -- should not assume one way or the  
4 other.

5 Q. So it should be a factor that they not  
6 consider?

7 A. In terms of what now? I want to make sure  
8 I --

9 Q. Well, you previously testified that it is a  
10 reality that license extension is a possibility. So  
11 I am trying to determine whether that reality that  
12 you mentioned, whether that is something the  
13 Commission should consider in the context of  
14 deciding this proceeding?

15 MR. FELDMER: I'm just going to object. And I  
16 hate to belabor the record with this, but I think  
17 that mischaracterizing his testimony slightly. I  
18 think he said as a general matter the license  
19 renewal process is a reality, but I think the  
20 question went a little further and went into license  
21 renewal for Edison's plants. I think that is a  
22 mischaracterization.

1 MR. FEIN: The witness can answer the question.

2 JUDGE CASEY: I agree. It is an extension to see  
3 whether or not that would carry forward in this  
4 proceeding, so if the witness has an answer, we  
5 would like to hear it.

6 THE WITNESS: In my view, the Commerce Commission  
7 should not make any assumptions about future NRC  
8 deliberations, decisions in conducting its own  
9 mission.

10 BY MR. FEIN:

11 Q. How about future actions of Commonwealth  
12 Edison Company with respect to seeking license  
13 extensions, should the Commission similarly not make  
14 any assumption or judgment one way or another?

15 A. I am not -- you know, I am a little  
16 confused.

17 The Commission obviously can consider  
18 Commonwealth Edison making an application, but that  
19 is quite a bit different than making the assumption  
20 that Commonwealth Edison plants' licenses will be  
21 renewed and even more remote from assuming that the  
22 Commonwealth Edison plants will exercise any renewed

1 license, period, if they did have the licenses  
2 renewed.

3               So the application process is a very  
4 preliminary step, and it is a long way from  
5 establishing with certainty that the applications  
6 will be approved.

7 BY MR. FEIN:

8       Q.    Now I am a confused a little bit. Let me  
9 try to break this up, and we are going to talk about  
10 two separate things, the application process and the  
11 approval process so that the record is clear in this  
12 proceeding.

13           Is it your recommendation in this  
14 proceeding that the Commission should or should not  
15 consider the possibility that the company will seek  
16 a license extension for any of its plants?

17       A.    My rebuttal testimony is a rebuttal to Mr.  
18 Schlissel's direct testimony, testimony which in my  
19 view provides a false impression to the Commission  
20 that license renewal is a veritable certainty. And  
21 in my rebuttal testimony, the point I make several  
22 places is that there is sufficient technical

1 uncertainty and regulatory uncertainty in the  
2 process such that it is not -- it is not  
3 appropriate, it would be inappropriate for the  
4 Commission to assume that it is a certainty.

5 MR. FEIN: I would move to strike the entire  
6 answer, as I simply asked whether he agreed with  
7 whether the Commission should consider that. I did  
8 not ask for a re-testimony regarding what he  
9 testified to in his rebuttal testimony.

10 I am trying to clarify the record. I  
11 thought these were pretty straightforward questions.  
12 We have now gotten it completely confused in the  
13 record, and it is now even further confused.

14 The recommendation is either the  
15 Commission consider it or not consider it, or if he  
16 thinks they should -- I think it calls for a pretty  
17 simple answer.

18 JUDGE CASEY: Do you have a response,  
19 Mr. Feldmeier.

20 MR. FELDMEIER: I think it was a fair response to  
21 the question. It is how he would explain -- his  
22 response to the question was clear. I think it is

1 entirely appropriate.

2 JUDGE CASEY: The motion to strike is granted.  
3 If the Commission should consider it, I want to know  
4 why. If they shouldn't consider it, I want to know  
5 why.

6 MR. FELDMEIER: Perhaps we can have the question  
7 read back, or, David, if you have it in mind.

8 MR. FEIN: Let me try to restate what I was  
9 intending to ask.

10 BY MR. FEIN:

11 Q. Should the Commission in its deliberations  
12 in this case assume that Commonwealth Edison the --  
13 strike that. Let me restate it.

14 Should the Commission consider in this  
15 proceeding the possibility that Commonwealth Edison  
16 could seek renewal of license for any of its nuclear  
17 facilities?

18 A. Not to be evasive, but I would like to  
19 restrict my response to what I feel like I am  
20 qualified to talk about. And I don't presume to  
21 tell the Commission what they can or cannot review,  
22 just as I would not want anybody to presume to tell

1 the NRC what they can review.

2           What I am qualified to say and I say in  
3 my testimony is, I think it is inappropriate to  
4 assume that there is enough certainty in the license  
5 renewal process for the Commission to factor that in  
6 as an assumption in their planning.

7       Q.   My question asked whether that actually  
8 would apply. That is why I tried to break this up  
9 because we are muttering in the water of application  
10 and approval. So let's confine -- my question was  
11 confined to whether the Commission could consider --  
12 should consider the possibility that the company  
13 could seek a license extension for any of its  
14 plants?

15       MR. FELDMEIER: I am going to object. I think he  
16 just responded to the question.

17       MR. FEIN: No. He talked about approval and that  
18 it is too uncertain, the Commission should not  
19 consider approval.

20       JUDGE CASEY: And your question is more limited  
21 to the fact of whether they should consider  
22 application.



1       MR. FEIN: The possibility for application. I  
2 was trying to break up the --

3       JUDGE CASEY: If we can back that answer up.

4       THE WITNESS: And my candid answer to you on that  
5 question is, I really don't have a view on that. I  
6 don't know. I just don't have a view.

7       JUDGE CASEY: With regard to the application?

8       THE WITNESS: With regard to the application. I  
9 don't feel like I am qualified to comment on that.

10      JUDGE CASEY: And, again, that is application for  
11 license extension.

12      MR. FEIN: Correct.

13      JUDGE CASEY: Or renewal.

14      MR. FELDMEIER: License renewal.

15      JUDGE CASEY: Okay. Because one of the very  
16 first things we talked about was the important  
17 difference between renewal and extension.

18      THE WITNESS: Excuse me, your Honor, and there is  
19 an equally important distinction between the act of  
20 application and the act of renewal. So the  
21 application process is a very preliminary step and  
22 it does not involve any judgment on the part of the

1 NRC.

2 JUDGE CASEY: Mr. Fein, do you have another  
3 question?

4 MR. FEIN: I do. Thank you.

5 BY MR. FEIN:

6 Q. Is it your testimony that the Commission  
7 should assume that none of Commonwealth Edison's  
8 nuclear plants will receive approval from the NRC if  
9 they seek license extensions?

10 MR. FELDMEIER: I'm sorry. License renewals.

11 BY MR. FEIN:

12 Q. License renewals.

13 A. It is my view that it would be inappropriate  
14 for the Commission to assume in their planning that  
15 license renewal applications will be favorably  
16 decided on by the NRC, yes.

17 Q. Now, in your experience, you discuss that  
18 you have assisted senior management of nuclear  
19 utilities with respect to issues involving safe  
20 operation of decommissioning of nuclear stations.

21 Have you so assisted Commonwealth Edison  
22 Company in that manner?

1       A.    I have not assisted Commonwealth Edison  
2 Company, no.

3       Q.    Are you aware whether Commonwealth Edison  
4 Company has decided to retire any of its nuclear  
5 plants besides Zion before their initial license  
6 life?

7       A.    I am unaware of any plants, and when I was  
8 in the NRC as executive director, I was caught by  
9 surprise with the decision on Zion. So I would not  
10 expect to be aware of those plans in advance.

11      Q.    Meaning that you were surprised by the fact  
12 that the company sought to terminate the license?

13      A.    That's right.

14      Q.    Is it your testimony that early termination  
15 of a nuclear plant license is a factor that the  
16 Commission should consider, or is it something they  
17 should not?

18      A.    It is a reality just like license renewal is  
19 a reality in the industry, and I think the  
20 Commission should approach this in a balanced  
21 fashion, being aware of the recent history over the  
22 last decade of the industry, which is a history of

1 both license renewal and a history of early  
2 decommissioning, so it is a mixed history. I think  
3 the Commission ought to be aware of it.

4 Q. Have you conducted a study for submission in  
5 this proceeding of the market price of power in the  
6 future?

7 A. I have not.

8 Q. Have you conducted a study for submission in  
9 this proceeding of the operating and fuel costs in  
10 the future at Commonwealth Edison's nuclear plants?

11 A. I have not.

12 Q. Have you conducted a cost analysis for  
13 submission in this proceeding of maintaining and  
14 modifying Edison's stations?

15 A. I have not.

16 Q. Have you conducted a study or analysis for  
17 submission in this proceeding of any future  
18 technical conditions of equipment or operations for  
19 some or all of Edison's plants?

20 A. I have not.

21

22

1 (Change of reporters.)

2 Q. Have you conducted a study or analysis or  
3 submission in this proceeding of the current  
4 capacity of Commonwealth Edison Company's nuclear  
5 plants?

6 A. I have not.

7 Q. Are you aware of whether Commonwealth Edison  
8 is capable of increasing the capacity of any of its  
9 nuclear stations?

10 A. By that question, you're talking about power  
11 uprate?

12 Q. Yes.

13 A. And your question is am I aware of their  
14 plans or their ability?

15 Q. Ability.

16 A. I am aware that -- that boiling water  
17 reactors in particular have that ability of that  
18 generation, yes.

19 I don't know specifically about the  
20 Commonwealth plans.

21 Q. But you know in general that --

22 A. In general, yes, that is an option that many

1 utilities have exercised.

2 Q. Are you aware of any plans of the company to  
3 engage in power uprates as you just described them?

4 A. I am aware that there have been some  
5 preliminary feasibility studies done to explore  
6 whether or not power uprate made economic sense.

7 Q. You personally have not prepared any  
8 economic analysis or study for submission in this  
9 proceeding of any potential returns to Commonwealth  
10 Edison Company from seeking license extensions or  
11 renewals for some or all of its plans, have you?

12 A. I have not.

13 Q. Let me ask you a hypothetical:

14 If an electric utility entered into a  
15 letter of intent, say, to extend -- to take the  
16 steps to extend the life of a nuclear facility, is  
17 that a fact that a commission should consider in  
18 determining proper amounts of decommissioning cost  
19 recovery?

20 MR. FELDMEIER: That's a question about life  
21 extension or license renewal?

22 MR. FEIN: License renewal.

1 THE WITNESS: License renewal. And, again, what  
2 do you mean by letter of intent? I'm not familiar  
3 with that. You mean have they applied?

4 BY MR. FEIN:

5 Q. No. I was trying to give an example of a  
6 step that a utility may take in beginning the  
7 process to seek a license renewal.

8 A. I'm just not familiar with that concept of a  
9 letter of intent to apply.

10 An application is a tangible step to  
11 further the process. An application, as you  
12 probably know, takes several million dollars and at  
13 least three years to prepare and then an additional  
14 two years of NRC review.

15 That's a very extensive process. Now,  
16 that's a tangible process. And as I testified in  
17 cross-examination earlier, I don't have a view  
18 whether or not that should be matter of  
19 consideration for the commission. I can only talk  
20 about the NRC's deliberations in that regard.

21 Q. So if there was some tangible step that a  
22 utility has taken to begin the process of applying

1 and seeking license renewal, as I understand your  
2 testimony, that's still a fact that a commission  
3 should not weigh one way or another because of the  
4 uncertainties that you describe in the process of  
5 license renewal?

6 A. No. I said I didn't have a view. I don't  
7 feel like I'm qualified to advise the Commission on  
8 that.

9 What I can tell -- advise the Commission  
10 is that given my experience, to presume an outcome  
11 of that process would be inappropriate. To presume  
12 that once the application is made that the NRC will  
13 decide one way or the other on the technical issues,  
14 I would not want -- I would not venture to do that  
15 and I wouldn't advise anybody to venture to do that.

16 JUDGE HILLIARD: Mr. Fein, you exceeded your time  
17 limit. Try to wrap up, please.

18 MR. FEIN: It was the last question.

19 BY MR. FEIN:

20 Q. Let me see if I understand that answer that  
21 you gave.

22 Since you testified that in your



1 experience the license renewal process is a -- takes  
2 some time and money, as you describe, is it likewise  
3 your testimony that any steps that a utility takes  
4 to begin that process is not something that a  
5 commission should consider in the context of a  
6 proceeding like this?

7 A. In my judgment the only factor that matters  
8 is whether or not the license renewal application is  
9 approved. And that will be decided on the technical  
10 merits of the application.

11 And I don't know sitting here what the  
12 technical issues will be in the future. It's a  
13 moving target.

14 There are many, many aging issues.  
15 There's research going on. There's operating  
16 experience. There's various levels of uncertainty.

17 And to presume that the technical issues  
18 will lend themselves to easy resolution, I just  
19 don't know.

20 MR. FEIN: Thank you. Nothing further.

21 JUDGE HILLIARD: Before we go any further, could  
22 you articulate for us what the difference is between

1 license renewal and license extension.

2 THE WITNESS: Yes, your Honor.

3 License renewal is a regulatory process.

4 As I said earlier, from start to finish it's  
5 nominally about a five-year process, and most  
6 utilities are saying it's going to cost \$20 million  
7 plus or minus typically to prepare the application.

8 The utilities will spend -- of the five  
9 years, the utility will spend three years doing  
10 exceptionally indepth technical analysis and a  
11 regulatory analysis and an environmental analysis of  
12 their station against criteria that NRC has  
13 established.

14 And then once they do they submit the  
15 application -- if they still want to do, they may  
16 uncover, you know, in that process the likelihood of  
17 uncovering what we used to say is a show stopper  
18 kind of issue is a finite probability, so they may  
19 not decide to proceed.

20 If they still decide to proceed after  
21 that point, there's an additional two-year period, a  
22 nominal two-year period of NRC review, but that two

1 years assumes there's no hearing, and there hasn't  
2 been a hearing yet for an application.

3           If there's a hearing and it's -- and the  
4 application is vigorously contested, such as this  
5 hearing, then that will add even additional time, so  
6 that's another level, and then after that process  
7 which, as I said, is a nominal five year plus, then  
8 the utility will be granted an extension -- a  
9 license renewal of up to 20 years to add to their  
10 original 40-year license, so that theoretically they  
11 could operate for 60 years.

12           The decision to operate in that renewed  
13 period is a separate decision process. And that 's  
14 an economic decision that will be revisited daily,  
15 whether or not it makes sense to operate the  
16 facility.

17           And there's a host of reasons why it  
18 might be prudent to shut down or, you know --

19       JUDGE CASEY: That was contained within some of  
20 your testimony. So --

21       JUDGE HILLIARD: What is a license extension?

22       THE WITNESS: Well, the license extension is the

1 actual act of operating in the renewed license  
2 period.

3 JUDGE HILLIARD: Fine.

4 THE WITNESS: But they're separate decisions.

5 So you make a decision typically ten  
6 years before your original license, so at the  
7 30-year point you make a decision you want to apply  
8 for renewal.

9 The decision whether or not to actually  
10 exercise that period will probably be made a year or  
11 two before the end of --

12 JUDGE CASEY: Okay. Mr. Fein, did you have any  
13 additional cross based on the Examiner's question?

14 MR. FEIN: Can I move to strike an answer to a  
15 Hearing Examiner's question?

16 JUDGE CASEY: No.

17 MR. FEIN: I didn't think so.

18 JUDGE HILLIARD: Mr. Robertson, would you like to  
19 be next?

20 JUDGE CASEY: Did you want to formally make that  
21 motion?

22 MR. FEIN: That was off the record.

1 CROSS -EXAMINATION

2 BY

3 MR. ROBERTSON:

4 Q. Good morning, Mr. Callan.

5 A. Good morning.

6 Q. I'd like to talk to you about the truck that  
7 backed up to the dock at the NRC, if I might. Page  
8 6.

9 A. Yes.

10 Q. Line 128 to 129.

11 A. I remember that, yes.

12 Q. When did that occur?

13 A. Oh, it occurred while I was executive  
14 director. I could easily find out. It was when --  
15 it was when the Calvert Cliffs Plant applied, made  
16 their application.

17 And off the top of my head, I don't  
18 remember the exact month.

19 Q. Well, what year was it?

20 A. I think it was in 1997, in late '97 or early  
21 '98.

22 Q. Has the NRC modified its rules for renewal

1 of licenses since that first application was filed?

2 A. It has not modified to my knowledge the  
3 regulations, but the staff guidance for implementing  
4 the regulations has been in a relatively constant  
5 state of flux since then and it still is.

6 There's still areas that are still being  
7 crisped up and that process will continue forever  
8 essentially.

9 Q. And as that process continues, do you expect  
10 the trucks to get smaller?

11 A. Well, history would say the trucks will get  
12 larger, but I don't know. I won't speculate.

13 Q. Are you familiar with the Nuclear Energy  
14 Institute NEI?

15 A. I am, yes.

16 Q. And industry representatives participate in  
17 that?

18 A. They do.

19 Q. And they have working groups and technical  
20 committees?

21 A. They do.

22 Q. And are they in the process of providing

1 formal feedback to the NRC for the license renewal  
2 process?

3 A. They have been active in that, yes.

4 Q. And is this feedback based on experience  
5 gained in the initial application process for the  
6 two that have been approved thus far?

7 A. That was the case when I was executive  
8 director and I presume it's still the case, yes.

9 Q. Would you agree that at least on the NRC web  
10 site, the NRC indicates that these activities are  
11 expected to improve the efficiency and effectiveness  
12 of future license renewal reviews?

13 A. From the regulatory side, yes, the  
14 regulatory process.

15 Q. Would you also agree that there are other  
16 groups who are working toward this goal in the  
17 industry such as Babcock & Wilcox?

18 A. I'm not aware of any specific groups, but I  
19 wouldn't -- would not be surprised if there were.

20 Q. Well, has B & W entered an owners group  
21 submitted generic license renewal reports on reactor  
22 coolant systems and piping to the NRC or do you

1 know?

2 A. I don't know.

3 Q. Do you know whether or not Westinghouse  
4 owners group has submitted similar material to the  
5 NRC?

6 A. I know the Westinghouse owners group has  
7 been working on it. I don't know where their  
8 submittal stands.

9 Q. Do you know whether General Electric has  
10 submitted information on boiling -- on behalf of the  
11 boiling water reactor owners group?

12 A. Again, I'm aware that GE, General Electric,  
13 is working with their owners group. I don't know  
14 where their submittals stand. I don't know whether  
15 they have submitted or not.

16 Q. Is the purpose of these submittals to make  
17 the review process more efficient?

18 A. It is, yes.

19 Q. Now, would you also agree that on the  
20 applications that have been processed to date are  
21 the -- and approved for license renewal, all of them  
22 were completed in less than the 30-month time



1 period?

2 A. I am aware of that, yes.

3 Q. Would you also agree that of the two that  
4 are pending, they are either on schedule or ahead of  
5 schedule for approval?

6 A. Well, their reviews are ahead of schedule or  
7 on schedule.

8 Q. Thank you.

9 A. I would not add that statement for approval.  
10 I don't know where that stands.

11 Q. Well, don't -- doesn't the NRC prepare or  
12 the staff prepare some type of milestone schedule --

13 A. That's right.

14 Q. -- for these applications?

15 A. That's right but --

16 Q. And the -- let me finish, please.

17 And the end of each schedule specifies a  
18 date for Commission decision on the renewed license  
19 and the date for the renewed license to be issued,  
20 if approved?

21 A. Those are the milestone dates, right?

22 Q. And would you agree with me that the

1 milestone schedule for Arkansas Nuclear Unit I and  
2 the milestone schedule for Edwin I. Hatch license  
3 renewal application are on time or ahead of  
4 schedule?

5 A. I can only really talk from firsthand  
6 knowledge about the Hatch application which is on  
7 schedule, yes.

8 I don't have firsthand knowledge of the  
9 Arkansas Nuclear One submittal.

10 Q. I'm going to show you something that I took  
11 off the NRC web site.

12 It's entitled the Arkansas Nuclear One  
13 Unit I license renewal application, and ask you if  
14 you would look at that and agree with me that the  
15 license renewal review schedule is on time for that  
16 unit also?

17 MR. FELDMEIER: I take it you're not going to be  
18 marking this as a cross exhibit?

19 THE WITNESS: So far it is, but I might very  
20 importantly point out --

21 MR. ROBERTSON: That's all the question -- excuse  
22 me.

1 THE WITNESS: -- that there hasn't been a  
2 hearing.

3 MR. ROBERTSON: Excuse me, your Honor, the  
4 witness has answered my question.

5 JUDGE CASEY: It's a yes or no question. Your  
6 counsel will have an opportunity on redirect.

7 MR. REVETHIS: Do we have a clear answer?

8 MR. ROBERTSON: There is no answer because  
9 there's no question pending.

10 MR. REVETHIS: All right.

11 BY MR. ROBERTSON:

12 Q. Could you please turn to Page 2 of your  
13 direct testimony, Mr. Callan.

14 A. I'm there.

15 Q. The sentence that begins on Line 23 and ends  
16 on Line 26, please. You see that?

17 You state there: The NRC for its part  
18 does not prejudge the possible actions of state  
19 economic rate regulators like the Illinois Commerce  
20 Commission in making its policy determinations; is  
21 that correct?

22 A. That's what I said, yes.

1 Q. And I take it, prior to that, you're  
2 suggesting Illinois Commerce Commission not make any  
3 such judgment with regard to the NRC; is that  
4 correct?

5 A. On its independent safety role, yes.

6 Q. All right. Now, are you suggesting -- let  
7 me ask this hypothetical:

8 Let's suppose that the NRC regulations on  
9 the nuclear decommissioning trust funds are not the  
10 same as those imposed by the Illinois Commerce  
11 Commission.

12 A. I'm sorry, say that again, please.

13 Q. Let's suppose that the NRC regulations on  
14 nuclear decommissioning trust funds are not the same  
15 as those imposed by the Illinois Commerce  
16 Commission. Okay?

17 Let's suppose that the Illinois Commerce  
18 Commission's restrictions are more stringent.

19 And let's further suppose that those  
20 restrictions are imposed as a matter of law under  
21 Illinois -- in Illinois.

22 A. Yes.

1 Q. Do you believe the Illinois Commerce  
2 Commission should assume that the NRC will impose  
3 those same more stringent restrictions on those  
4 trust funds?

5 A. I'm sorry, more stringent than the NRC's  
6 own?

7 Q. Correct. For its policy making decisions in  
8 this case.

9 A. I'm going to make sure I understand this  
10 hypothetical.

11 The hypothetical is should the Commerce  
12 Commission assume that the NRC will enforce the  
13 state's requirements?

14 Q. Yes.

15 A. Not to my knowledge. I mean, that would be  
16 inconsistent with the general practice across a  
17 whole range of areas, not just decommissioning  
18 funds.

19 Q. That would also be consistent with your  
20 statement here; is that correct?

21 A. Right.

22 Q. Are you familiar at all with the proposal

1 that Commonwealth Edison has made in this case?

2 A. I am I'll say -- I'll use the word  
3 superficially familiar with the proposal, not in a  
4 lot of depth.

5 Q. Do you believe the NRC should make any  
6 predetermination as to the possible actions that  
7 might be taken by the Illinois Commerce Commission  
8 in the context of this proceeding?

9 A. Well, the subject of decommissioning funds  
10 for a nuclear power plant is a pivotal issue in  
11 terms of a license transfer, and I have had a chance  
12 to review the orders that were signed out earlier  
13 this month regarding that.

14 And, in fact, the NRC will require  
15 assurance that there's continuity in that area in  
16 all regards in that the regulations are complied  
17 with.

18 Q. Okay. In reviewing those orders, did you  
19 note that one of the conditions was that the trust  
20 funds, the Illinois trust funds, should follow the  
21 nuclear assets to the generation company that's  
22 being created by ComEd and PECO?

1       A.    I have the order available here, if you want  
2 to --

3       Q.    Would you look at the Braidwood order.

4       MR. FELDMEIER:  Is there a particular part of the  
5 order that you could refer him to to speed this up?

6       MR. ROBERTSON:  I hadn't realized that he had  
7 actually read them in preparation for this so I was  
8 happy to hear it so I wouldn't have to fish through  
9 it, but I will.

10 BY MR. ROBERTSON:

11       Q.    Do you have this one?  Look on Page 4.

12       A.    I'm actually missing it for Braidwood but I  
13 do have it for Byron, so if we could use Byron as  
14 the example it would be better for me.

15                   For some reason the attachment on  
16 Braidwood I just don't have, but I think the orders  
17 are fairly close.

18       Q.    I'm looking at Subparagraph 2 on Page 4.

19       A.    Yes.

20       Q.    That references ComEd shall transfer to  
21 Exelon Generation Company the decommissioning trust,  
22 that's what it says for the Braidwood units.

1       A.    Uh-huh.

2       Q.    Yours says for the Byron units?

3       A.    That's right.

4       Q.    And then it specifies the minimum amounts of  
5 such transfer; is that correct?

6       A.    That is correct.

7       Q.    Now, it imposes other conditions, doesn't  
8 it?

9       MR. FELDMIEIER:  At this point I'm going to  
10 object.  I have let this go on for a few moments.

11               Mr. Callan submitted testimony on license  
12 extension and life -- I'm sorry, I misspoke, license  
13 renewal and life extension.

14               He is a former official of the NRC, and  
15 now we have pulled out NRC orders that really are on  
16 separate subjects and are going into decommissioning  
17 funding levels, and we're going to have him explain  
18 those orders.

19               I think that's outside of the scope of  
20 his direct testimony.

21       MR. ROBERTSON:  Well, two things.

22               Number one, this witness is making a



1 policy statement about what the Commission should do  
2 in relation to expectations of determinations by the  
3 NRC and what the NRC does in relation to  
4 expectations about activity at this Commission.

5           He has also said that he reviewed the  
6 orders as part of his preparation for the testimony,  
7 and I think I'm entitled to inquire whether or not  
8 his position holds in all instances.

9           In other words, would he make this  
10 recommendation that he's making here today each and  
11 every instance and does it hold true in each and  
12 every instance and I think it goes to the weight  
13 that the ultimately should be given to his  
14 testimony.

15       JUDGE HILLIARD: How many instances do you intend  
16 to go through.

17       MR. ROBERTSON: Just this one. I think all the  
18 orders are the same.

19       JUDGE HILLIARD: Overruled.

20 BY MR. ROBERTSON:

21       Q. Now, the order for approving the transfer of  
22 license issued by the NRC that we're discussing,

1 there was a separate order issued for each of the  
2 nuclear stations; is that correct?

3 A. That is correct.

4 Q. All right. And basically would you agree  
5 with me that the language is essentially the same  
6 except for the numbers such as the balances in the  
7 decommissioning trust?

8 MR. FELDMER: Which particular language are you  
9 referring to?

10 I think this is a little unfair not to  
11 have his in the record.

12 MR. ROBERTSON: Paragraph 2.

13 MR. FELDMER: Excuse me for one second.

14 I think it's a little unfair to have  
15 documents like this just referred to and summarized  
16 in sweeping ways when they're not in the record.

17 I just think it lends confusion to the  
18 record.

19 MR. ROBERTSON: Let me go straight to the point  
20 then.

21 BY MR. ROBERTSON:

22 Q. Does the order impose and list all of the

1 conditions that the NRC imposes on Commonwealth  
2 Edison and Exelon Genco on the transfer of the  
3 license?

4 A. It does.

5 Q. And is it the custom of the NRC to leave any  
6 condition out?

7 A. It's not the custom, no.

8 Q. Can you tell me whether or not the NRC  
9 specifically conditions this order on Commonwealth  
10 Edison receiving \$121 million of decommissioning  
11 cost per annum for six years in this proceeding?

12 MR. FELDMEIER: The particular order for Byron  
13 that you're referring to?

14 MR. ROBERTSON: Yes. The one he has in front of  
15 him.

16 THE WITNESS: I honestly don't understand the  
17 question. What's the connection between that and  
18 the order?

19 BY MR. ROBERTSON:

20 Q. Is there a condition specified in the order  
21 that says the licenses can only be transferred to  
22 Exelon Genco if Commonwealth Edison receives

1 \$121 million in decommissioning cost per year for  
2 six years through its nuclear decommissioning rider  
3 cost recovery mechanism?

4 A. Those words are not in the order.

5 Q. Okay.

6 A. Was that your question?

7 Q. Yes.

8 JUDGE HILLIARD: You have exceeded your time.  
9 Could you try to wrap it up.

10 MR. ROBERTSON: Did I reserve time? I don't  
11 remember.

12 JUDGE HILLIARD: Yes, you did.

13 MR. ROBERTSON: That was for Mr. Thayer.

14 JUDGE CASEY: How much more time do you think  
15 you're going to need, Mr. Robertson?

16 MR. ROBERTSON: I have one other line of cross  
17 that relates to this late filed exhibit -- or I  
18 don't know -- not late filed. Timely filed.

19 MR. FELDMEIER: It was a timely filed exhibit.

20 MR. ROBERTSON: But only lately in my hands.

21 Now, which portion of Question No. 1 does  
22 this witness not sponsor?

1 MR. FELDMEIER: I'll respond to that.

2 He is sponsoring the first paragraph and  
3 the first two sentences of the second paragraph.

4 The balance of the second paragraph will  
5 be sponsored by Mr. Berdelle.

6 BY MR. ROBERTSON:

7 Q. Did you prepare this response?

8 A. I did not.

9 Q. Do you know who prepared the response?

10 A. I do not.

11 Q. When did you see the response?

12 A. I saw it yesterday.

13 Q. Do you know whether or not the NRC  
14 regulations on nuclear decommissioning trust require  
15 that excess -- any money in excess of that which is  
16 required to decommission the units be refunded to  
17 utility retail customers?

18 A. I know of no such provision in the  
19 regulations.

20 Q. Do you know whether or not any of the NRC  
21 regulations require that the -- strike that.

22 To the best of your knowledge there's no

1 provision for refunds in the NCR regulations?

2 A. With respect to decommissioning funds?

3 Q. Yes, sir.

4 A. I know of no provisions.

5 Q. Now, do you know whether or not the NRC  
6 regulations permit investments that are -- strike  
7 that.

8 Do you know whether the NRC regulations  
9 require that a separate trust fund be maintained for  
10 each nuclear unit?

11 A. I have to go back and look at 10 CFR 50.75,  
12 but my understanding is that each unit is handled  
13 separately.

14 Q. Do you know whether or not the NCR  
15 regulations on trust funds require any distribution  
16 of the -- strike that.

17 Is there any provision in the NRC trust  
18 funds that deals with the transfer of the nuclear  
19 assets to a new owner?

20 MR. FELDMEIER: I'm going to object to that, to  
21 the term NRC trust funds. I don't think that's a  
22 term that's been described.

1 BY MR. ROBERTSON:

2 Q. Is there any provision in the NRC  
3 regulations in 10 CFR 50 or any of the subparts for  
4 that which deals with the situation in which the  
5 nuclear assets which are the subject of either the  
6 external superfund or the trust funds that are  
7 created under those regulations, are transferred to  
8 a third party?

9 A. You're quizzing me on my knowledge of the  
10 regulations.

11 Q. You're sponsoring the exhibit, so. . .

12 A. Two volumes.

13 I have to go back and look at the  
14 regulations and give it a careful read to go give  
15 that answer -- question a fair answer, which I could  
16 do but I don't want to speak with authority on that  
17 without having looked at it.

18 Q. You're the only witness we have here and  
19 you're sponsoring what the NCR regulations are.

20 A. Well --

21 MR. FELDMEIER: Is that a question?

22 MR. ROBERTSON: No. I'll move to strike, if he

1 can't answer the questions, he didn't prepare the  
2 exhibit, he didn't see it until the other day, he  
3 didn't know what was in it, and he can't answer the  
4 questions.

5 MR. FELDMEIER: Examiner, briefly I think you're  
6 both aware of the history with respect to this.

7 This is something that -- in the request  
8 that was circulated, there was no requirement that  
9 it be put in testimony. We were told in the middle  
10 of these hearings that it should be sponsored as  
11 testimony. We have done that.

12 And the fact that Mr. Callan has  
13 testified about when he saw that is sort of a  
14 product of that process.

15 MR. ROBERTSON: I am entirely sympathetic and I  
16 know the circumstances and I'm not objecting to the  
17 circumstances.

18 What concerns me is this has been  
19 presented as the witness who is the expert on the  
20 area, and he can't respond to the questions.

21 I'll tell you what, I don't have any  
22 further questions.



1 JUDGE CASEY: With respect to your motion to  
2 strike, are you withdrawing the motion to strike?

3 MR. ROBERTSON: I'll withdraw it. Thank you.

4 JUDGE HILLIARD: Mr. State's Attorney.

5 CROSS-EXAMINATION

6 BY

7 MR. LEVIN:

8 Q. Good morning, Mr. Callan. I'm Mitchell  
9 Levin. I'm an assistant state's attorney of Cook  
10 County.

11 A. Good morning.

12 Q. At the risk of covering some of the  
13 ground -- if I cover some of the ground that  
14 Mr. Fein has covered with you, I apologize, but I  
15 just wanted some clarification.

16 And I wanted to refer specifically to  
17 your responses in rebuttal to Mr. Schlissel's  
18 questions since I think that's what you were  
19 primarily doing and let's go to Page 9 of your  
20 rebuttal.

21 A. I'm at Page 9.

22 Q. And Mr. -- the question starts at Line 194.

1 I'll just read that briefly.

2           Mr. Schlissel's contention was that the  
3 ICC should base its decommissioning collection  
4 policies on the assumption that the operating lives  
5 of each of the company's nuclear plants will be  
6 extended beyond the expiration of their existing  
7 licenses.

8           Now, that presumes a certain amount of  
9 certainty on his part which he may or may not be  
10 justified.

11           But I'd like to change that question a  
12 bit to read the ICC should base its decommissioning  
13 policies, in part -- I'm adding that -- on the  
14 assumption that the operating lives of each of the  
15 company's nuclear plants may be extended beyond the  
16 expiration of their existing licenses so there's a  
17 good deal of uncertainty in there, it's not  
18 quantified, but given my hypothetical question that  
19 Mr. Schlissel would propose, would that change your  
20 answer -- your testimony in any way?

21       MR. FELDMEIER: I'm just going to object. Could  
22 that be a clarified a little bit? Frankly I lost a

1 little bit of the assumptions that were going into  
2 what you're asking the witness.

3           Could you just state the statement you'd  
4 like him to respond to.

5 BY MR. LEVIN:

6       Q.   Well, I have changed Mr. Schlissel's  
7 statement and it could be phrased in any number of  
8 ways, but I have added these words in part on  
9 Page 195, in between policies and on, and then in  
10 Line 196 I'm changing the more definitive word will  
11 to may.

12           So if Mr. Schlissel were to have asked  
13 that, would that have changed your responses in any  
14 way?

15       A.   So, I'm sorry to have to ask for the  
16 additional clarification, you're talking now about  
17 license renewal not actually license extension?

18           You're not asking me hypothetically to  
19 assume operation beyond 40 years? You're just  
20 saying --

21       Q.   No.

22           Mr. Schlissel seems to be assuming for

1 purposes of the Commission's considerations that the  
2 plants will be extended beyond the expiration of  
3 their existing licenses, and what I'm asking is  
4 should the Commission consider as a factor in its  
5 decommissioning policies the possibility that the  
6 operating lives of the company's nuclear plants may  
7 be extended?

8               In other words, you have pointed out on  
9 Page 11 a number of factors that ComEd considers.  
10 And, in fact, is probably considering because -- are  
11 you aware that they're considering -- they have  
12 gotten an analysis of license renewal for the  
13 Dresden and Quad Cities plants?

14               Are you familiar with that?

15       MR. FELDMEIER: That was a compound question. He  
16 could respond to the last part of that. There were  
17 a couple of preliminary questions.

18               If he could just respond to the last one,  
19 that would be fine.

20       JUDGE HILLIARD: Respond to the last part of the  
21 question.

22       THE WITNESS: I am aware that there's been a

1 feasibility study done.

2 BY MR. LEVIN:

3 Q. And you have identified a number of factors  
4 the company would consider on Page 11 and you have  
5 pointed out, justifiably, the uncertainties in some  
6 of those factors, such as market price of power, the  
7 operating cost, correct?

8 A. No. My testimony on Page 11 addresses Mr.  
9 Schlissel's assumption or the ambiguity from his  
10 testimony that life extension is the same as license  
11 renewal.

12 In other words, obtaining license renewal  
13 from the NRC is tantamount to saying that the plants  
14 will, in fact, operate beyond their original life.

15 And my point is is that those are  
16 completely different decision processes. Completely  
17 different.

18 And so that same ambiguity crept into  
19 your question. In other words -- and the point of  
20 my testimony is to try to make clear that there is  
21 uncertainty associated with license renewal. I  
22 talked about that. And there's also uncertainty

1 associated with -- even if you got license renewal,  
2 there's additional uncertainties associated with the  
3 decision to operate beyond 40 years or even to  
4 operate as long as 40 years and history would -- is  
5 replete with examples of that.

6 And so much of my testimony on Page 11 is  
7 intended to address the latter.

8 Q. Let's break it down into -- let's put it in  
9 terms of license renewal and then life extension.  
10 And I want to do this in a way that  
11 Mr. Schlissel asked it on Page 9.

12 Should the ICC base its decommissioning  
13 policies in part on the possibility that the  
14 company's nuclear plants may be approved for license  
15 renewal?

16 A. In my view, it would be inappropriate to  
17 base planning on that assumption.

18 Q. That's -- is that because there are too many  
19 uncertainties involved in that consideration?

20 A. Yes. There are too many uncertainties to  
21 base long-range planning on that presumption.

22 Q. Now, let's assume that the license has been

1 granted.

2                   Would you say that the ICC should base  
3 its consideration as a factor in the decision -- in  
4 the possibility that ComEd will choose to extend the  
5 life of the plant?

6       MR. FELDMEIER: I object to that because he's  
7 used the phrase assume the license has been granted  
8 and I don't understand what that means.

9 BY MR. LEVIN:

10       Q. Consider that a hypothetical. We have  
11 already discussed license renewal.

12                   Let's assume for purposes of the question  
13 that the license has been renewed and that now the  
14 decision is whether to extend the life of the plant.

15                   And that's, I think, where -- correct me  
16 if I'm wrong -- but some of the factors on  
17 Page 11, those are specifically for -- those are  
18 life extension factors; is that correct?

19       A. That's right.

20                   The simplest way to respond to that is --

21       JUDGE CASEY: What are we responding to, whether  
22 or not those factors are --

1 MR. LEVIN: Let me state the question again.

2 JUDGE CASEY: Here's what I'm going to do.

3 On Page 11 those were factors to consider  
4 for life extension?

5 THE WITNESS: That's right.

6 JUDGE CASEY: Next question.

7 BY MR. LEVIN:

8 Q. Should those factors and ComEd's  
9 consideration of them be something that the  
10 Commission should consider in its decommissioning  
11 collection decision?

12 A. Those are economic factors and I'm sure I  
13 don't know for sure -- I shouldn't say I'm sure.

14 They strike me as being issues that the  
15 Commission would necessarily -- necessarily involve  
16 themselves with, but I'm not sure of the question  
17 exactly.

18 Q. Well, the question -- the question is  
19 basically this:

20 Should the Commission take into account  
21 those factors and the fact that ComEd has begun an  
22 analysis for license renewal on -- an analysis for



1 life extension on some of its plants in its decision  
2 about the decommissioning collection?

3 A. In my view it would be inappropriate for the  
4 Illinois' Commerce Commission to make any  
5 presumptions about life extension or license renewal  
6 for its long-range planning.

7 When I -- when I first became executive  
8 director in 1997, nobody was talking about license  
9 renewal. The conventional wisdom in the NRC and the  
10 conventional wisdom in the industry was that there  
11 was going to be massive decommissioning. So that  
12 was only three or four years ago.

13 That experience of mine causes me to be  
14 very, very cautious about making any long-range  
15 predictions about license extension, license  
16 renewal, decommissioning.

17 It's -- the history of the last decade in  
18 particular has been quite a volatile market.

19 JUDGE CASEY: Next question.

20 MR. LEVIN: All right.

21 BY MR. LEVIN:

22 Q. The decommissioning process itself and the

1 hearings that we have involve a great deal of  
2 uncertainty, don't they?

3           We're being asked to make projections 20  
4 years out with regard to decommissioning costs;  
5 isn't that correct?

6       A.    That is correct.

7       Q.    And so some of the decisions with regard to  
8 license renewal and life extension are also  
9 projections that we would make 20 years out; isn't  
10 that correct?

11      A.    I'm --

12      Q.    There's -- as there is uncertainty in the  
13 decommissioning process and the cost estimation of  
14 that, there's uncertainty in license renewal and the  
15 life extension of the plants, isn't there?

16      A.    We're talking -- I'm talking about two --,  
17 if you will, I guess two different types of  
18 uncertainty.

19            In the case of decommissioning costs, the  
20 NRC has already deliberated from a policy standpoint  
21 on that, has implemented regulations, made its  
22 decisions and issued implementing guidance. And

1 annually that is revisited as part of the  
2 regulations and updated to reflect real world  
3 experience.

4 Q. Let me -- I want to refer you to Page 10,  
5 and see your answer starting at Line 206 where you  
6 say, and I'll quote, in part, it is there  
7 fundamentally unreasonable and inappropriate for a  
8 state regulatory commission to decide a course of  
9 action for its own policy purposes which presumes  
10 what actions a federal safety regulator may or may  
11 not take many years in the future? Is that --  
12 that's --

13 A. That is correct.

14 Q. And that statement holds regardless of what  
15 projections we may make regarding market prices or  
16 decommissioning cost or technology or safety  
17 regulations 20 years into the future, the same time  
18 period that we're considering for decommissioning  
19 costs?

20 A. That statement only refers to those  
21 judgments made by the NRC carrying out its  
22 independent safety role, where it acts independently

1 to review safety matters and make decisions based  
2 upon that review, which would be the case in  
3 reviewing an application for a license renewal, for  
4 example, but would not be the case in the example  
5 you're using which is to establish appropriate  
6 levels of decommissioning funding.

7 Q. Well, in the decommissioning process, we  
8 could lay out different scenarios of what might or  
9 might not take place and have numbers associated  
10 with those, correct?

11 A. That's right.

12 Q. And with regard to life extension of the  
13 plant, we can lay out different scenarios as to some  
14 of the factors you have laid out on Page 11 and come  
15 up with some estimations as to how much money the  
16 Genco is going to make or how much it's going to  
17 have to pay decommissioning or how much is going to  
18 be available in the trust fund.

19 We could do that, couldn't we?

20 A. Perhaps.

21 Q. I'm not --

22 A. The NRC is -- the NRC will review the

1 application solely on its technical and safety  
2 merits, not the economics.

3           The economics don't enter into the staff  
4 approval process of the application. That's not the  
5 NRC's job. It's outside the scope.

6       Q.    Your statement on Page 10 starting at 206,  
7 that applies only to license renewal and not to the  
8 life extension decision; is that right?

9       A.    That's right. Because the NRC doesn't enter  
10 into the decision to extend the life or to  
11 decommission early. That's not an NRC decision.  
12 That's a utility decision.

13       Q.    But with regard to the license renewal isn't  
14 it possible for the Commission to lay out different  
15 scenarios and based on the evidence that 's collected  
16 make certain decisions as to probabilities of how  
17 those -- what possible outcomes there's going to be?

18       A.    I'm a little confused.

19            You're saying that you would then assume  
20 that the NRC would decide one way or the other on  
21 the application? Is that what you're asking me  
22 to --

1       Q.    Well, they can make that assumption based on  
2 the personnel and the regulations in place at the  
3 time.

4               You're suggesting that they can't do that  
5 at all.

6       MR. FELDMEIER:  Just so we're clear, they is the  
7 Commission, the Illinois Commission?

8       MR. LEVIN:  The Commission.

9       THE WITNESS:  I'll say this at the outset, you  
10 certainly would want to consider doing that until  
11 you finished the three-year inhouse review because  
12 then you -- I mean at this point you don't even know  
13 what the issues are so how can you decide at this  
14 point when you don't even know what the technical  
15 issues are.

16              You won't even establish what the  
17 technical issues are until three years after you  
18 decide to start the process.  So -- and then you'll  
19 know what you're dealing with.

20              Once you know what you're dealing with,  
21 then you're in a much more informed position make  
22 any kind of judgment.

1                   And right now, we don't know what the  
2 issues are. We can't predict what the issues are  
3 going to be.

4 BY MR. LEVIN:

5       Q.     Should the Commission wait until ComEd's  
6 decision process is completed and that three-year  
7 period has passed so it has more information?

8       A.     Again you'll -- please restate that. I  
9 don't understand your question.

10      Q.     I mean, given all the uncertainty in the  
11 license renewal process and the fact that we might  
12 want the Commission to have as much information as  
13 possible, shouldn't they wait until the license  
14 renewal process is completed before making its  
15 decision?

16      A.     That's not my judgment to make. I mean, I'm  
17 just explaining to you why at this point it's  
18 inappropriate to predict what the outcome of the  
19 license renewal application process is going to be  
20 because you haven't -- without going through at  
21 least the preliminary steps to scope the issue, you  
22 don't know what the technical issues are.

1                   And even then, once you have done that,  
2   you still have to go through two years of NRC review  
3   before you finally have an answer with a possible  
4   hearing.

5       MR. LEVIN: That's all I have. Thanks.

6       JUDGE CASEY: Any additional cross?

7       MS. NORINGTON: Yes, very briefly.

8                   CROSS-EXAMINATION

9                   BY

10                  MS. NORINGTON:

11       Q.    Good morning, Mr. Callan. My name is Karen  
12   Norington. I represent the Citizens Utility Board.  
13   I just have a very few questions for you. I'd like  
14   to try to keep this as brief as possible.

15       JUDGE CASEY: Counsel, if you can try to get the  
16   microphone as close to you as possible.

17       MS. NORINGTON: Can you hear me?

18       THE WITNESS: I can hear you, yes

19   BY MS. NORINGTON:

20       Q.    You have spoken earlier about uncertainties,  
21   future uncertainties with respect to decommissioning  
22   and license renewal.



1                   Do you understand that the ICC has to  
2 make a decision now or in the near future regardless  
3 of the future uncertainties?

4       A.    I wasn't aware of that.

5       Q.    Okay.  And given that they have to make a  
6 decision --

7       A.    Excuse me, I'm sorry, I guess, upon  
8 reflection, I guess I was aware that there was that  
9 sense of immediacy about this proceeding, yes.

10      Q.    Given that sense of immediacy as you say --

11      A.    Yeah.

12      Q.    -- should the Commission assume that no  
13 plants will receive renewal?

14      A.    If I could just restate that slightly.

15                   I would say that, as I have said before,  
16 it would be inappropriate for the ICC to base its  
17 planning on the assumption that any plants will be  
18 renewed.

19      Q.    So does that mean that they should assume  
20 that some plants might receive renewal?

21      A.    My testimony and my strongly held view is  
22 that because of the uncertainties we have been

1 talking about this morning and other reasons,  
2 perhaps, it's inappropriate to factor life extension  
3 or license renewal into that planning.

4 Q. Let's talk about license renewal for a  
5 moment.

6 Is one of the criteria for license  
7 renewal a review of the previous operating history  
8 of a plant?

9 A. As it -- yes, as it applies to the pivotal  
10 technical issues, primarily aging, the aging effect  
11 on equipment, so the answer is a partial yes.

12 Q. Okay. Given ComEd's previous record of  
13 performance or operating history, is it more likely  
14 than not that none of ComEd's plants will receive  
15 renewal?

16 A. No, not at all.

17 I think Commonwealth's previous  
18 performance history like any plant's previous  
19 performance history is going to be an issue, it is  
20 an issue; and it's factored into the regulation and  
21 it is -- it will be part of the application, part of  
22 the three-year process to establish that

1 notwithstanding any kind of legacy or historical  
2 issues, that there's confidence going forward.

3 That's part of the application process.

4 MS. NORINGTON: Thank you. I have no further  
5 questions.

6 MR. WARREN: I hadn't indicated that we had any,  
7 but could I ask just a couple real short ones?

8 JUDGE HILLIARD: Go ahead.

9 Is the city going to have any questions?

10 MR. REDDICK: I am hoping that before it's all  
11 over, the confusion in my mind will be resolved. I  
12 have one point of confusion.

13 JUDGE CASEY: Time is running out.

14 CROSS-EXAMINATION

15 BY

16 MR. WARREN:

17 Q. Good morning, Mr. Callan. My name is Larry  
18 Warren from the Attorney General's Office. I just  
19 have a quick question.

20 You mentioned the NRC regulations. Are  
21 there any regulations in the NRC that govern the use  
22 and management of the decommissioning trust fund?

1       A.    Well, 10 CFR 50.75 is the governing  
2 regulation and it's fairly prescriptive. It does  
3 specify certain financial instruments as appropriate  
4 for the whole spectrum of NRC license activities,  
5 yeah.

6       Q.    Does it also -- do they also govern the use  
7 or the management of the particular -- regardless of  
8 what instrument is used in the fund itself?

9       A.    To a degree. The regulation is written to  
10 assure that whatever the financial instrument is,  
11 and there's a list of acceptable ones, they are  
12 robust enough to withstand the test of time.

13      Q.    Do you know if there's anything in the  
14 regulations governing the use or management of the  
15 funds that would prevent the plant's owner from  
16 borrowing money from the fund?

17      A.    Well, I -- I don't think there's any  
18 specific regulation that's worded that way. You  
19 have to look at each of the instruments and the  
20 prohibitions and the construction of each of those  
21 financial instruments.

22                   And I think you would arrive -- I know

1 you would arrive at the answer that no, you can't.

2 You can't do that.

3 And but -- I'll stop at that point.

4 MR. WARREN: Okay. No further questions.

5 CROSS-EXAMINATION

6 BY

7 MR. REDDICK:

8 Q. Mr. Callan, you're aware that under Edison's

9 proposal this Commission must decide now once and

10 for all time what the appropriate recovery is

11 supposed to be?

12 A. I'm aware of that, yes.

13 Q. And you're aware that if the Commission

14 refuses to make any assumption regarding NRC

15 approval of license renewals, that is equivalent to

16 assuming that no plants will be approved for

17 renewal?

18 A. I wasn't aware of that assumption.

19 Q. Do you see the logic of that?

20 MR. FELDMEIER: I object that's -- that's really

21 not a question.

22 THE WITNESS: I mean --

1 JUDGE CASEY: The objection is overruled. If he  
2 can see the logic.

3 THE WITNESS: My position is that that's, to a  
4 certain extent, almost a false dichotomy.

5 In terms of planning, planning horizon  
6 for economic decisions, unless you have -- unless a  
7 plant has license renewal in its hip pocket, so to  
8 speak, it would be inappropriate to assume that it 's  
9 going to get that license renewal.

10 BY MR. REDDICK:

11 Q. Do you agree with me that in considering the  
12 future of Edison's plants, this Commission in making  
13 this policy decision must assume either that no  
14 plants will receive renewal, some plants will  
15 receive renewal or all plants will receive renewal?

16 A. Is there a fourth option which is that  
17 license renewal will not be part of the  
18 deliberations, part of the consideration, and that  
19 the decision will be made on the original license  
20 life of the plants, is another option.

21 Q. Do you think that is a -- well, that I won't  
22 even ask that.

1                   Is that the option that you're  
2 recommending to the Commission?

3       A.    I think absent approval of license renewal,  
4 that is the appropriate option is to assume -- to  
5 make whatever judgments the ICC makes based upon  
6 what is known which is the original license term of  
7 the plants.

8       Q.    So in making its decision, the Commission  
9 should not consider the possibility of renewals at  
10 all?

11      A.    That's my considered opinion, yes.

12      Q.    And as to the three options that I  
13 identified, zero renewals, some renewals or all  
14 renewals, you're not prepared to make a  
15 recommendation on either of those three?

16      A.    I told you my fourth option which is not to  
17 consider license renewals as part of the  
18 deliberations.

19      Q.    Let me rephrase it directly.

20                   You would recommend none of those three  
21 options?

22      A.    I would recommend none of the three options.

1 MR. REDDICK: Thank you.

2 JUDGE HILLIARD: Anybody else?

3 EXAMINATION

4 BY

5 JUDGE HILLIARD:

6 Q. Mr. Callan, have there been any applications  
7 for renewal that have been denied by the NRC?

8 A. There have been no applications denied by --  
9 well, there have been no applications denied, right.

10 Q. And are the two that were granted the two  
11 that have been applied for, is that more than one  
12 generator? Are there more than one generator  
13 involved in those applications?

14 A. More than one utility and more than one  
15 design type, but none of them are similar to the  
16 designs that Commonwealth has.

17 JUDGE HILLIARD: Thank you.

18 JUDGE CASEY: Redirect?

19 MR. FELDMEIER: Can we have a moment.

20 JUDGE CASEY: Let's take a five-minute break.

21 MR. FEIN: Mr. Examiners, can I ask a follow-up  
22 question to the Examiner's question because I think



1 it's contrary to what was stated earlier and maybe  
2 the witness can clarify his testimony so this  
3 wouldn't have to be covered on redirect.

4 JUDGE HILLIARD: Okay.

5 FURTHER CROSS-EXAMINATION

6 BY

7 MR. FEIN:

8 Q. If I understand your response to the Hearing  
9 Examiner's question, you stated that none of the  
10 plants that have been applied for license renewals  
11 are of the same, did you say design as Commonwealth  
12 Edison?

13 A. No, none of the plants that have approved --  
14 been approved are the same.

15 In other words, I testified earlier one  
16 of the four -- one of the two plants that have  
17 application before the Commission is a similar  
18 design to some of the Commonwealth plants, yes, but  
19 none of the ones that are approved are similar.

20 MR. FEIN: Thank you.

21 JUDGE CASEY: We'll take a five-minute break.

22 We're off the record.

1 (Whereupon, a brief

2 recess was taken.)

3 JUDGE HILLIARD: Redirect?

4 JUDGE CASEY: Back on the record.

5 MR. FELDMER: We have a brief couple questions.

6 REDIRECT EXAMINATION

7 BY

8 MR. FELDMER:

9 Q. Mr. Callan, Mr. Robertson asked you a  
10 question during your cross-examination about whether  
11 the NRC's orders approving the transfer of the  
12 license for one of ComEd's nuclear stations  
13 contained a requirement that ComEd collect \$121  
14 million for a six-year period as a condition of the  
15 transfer.

16 Do you recall that question?

17 A. I do recall the question.

18 Q. Would you expect to see a provision like the  
19 one that Mr. Robertson described in an NRC order  
20 resolving a license transfer application?

21 A. No. I would not expect to. That's why I  
22 had difficulty understanding the question.

1 Q. Could you tell us why --

2 A. I would not expect to see it.

3 Q. Could you tell us why you wouldn't expect  
4 that?

5 A. That is a -- that is the domain of the  
6 economic regulator, the state regulator to make  
7 those kinds of decisions.

8 If you read the order, the order simply  
9 says that at the time of license transfer, whatever  
10 arrangements is made by the state regulators, that  
11 arrangement is subject to NRC approval before the  
12 actual license transfer so NRC has to buy off, if  
13 you will, has to buy off on whatever the arrangement  
14 is and has to assure itself that whatever the  
15 arrangement is meets the intent of the NRC  
16 regulations, but it will not prescribe any  
17 arrangement.

18 Q. In response to a question from the Hearing  
19 Examiner, you indicated that no license transfer  
20 applications have been denied by the NRC.

21 Do you recall that question and answer?

22 A. I do recall that.

1 Q. Have any license -- I'm sorry, I misspoke.

2 That no license renewal applications have  
3 been denied by the NRC. Do you recall that question  
4 and answer?

5 A. I do recall that.

6 Q. Have any license renewal applications been  
7 abandoned by the licensee?

8 A. Well, we know of two relatively high  
9 visibility cases that predated the revision to the  
10 regulations. The Monticello case and the Yankee  
11 Rowe case -- Yankee Atomic case, I'm sorry.

12 We don't know about all the other cases  
13 where licensees or utilities looked at the situation  
14 and elected not to make the application, but we know  
15 of those two cases.

16 Q. In those two cases can you tell us why the  
17 applications were abandoned?

18 A. Well, in the case of the Yankee Atomic  
19 process, they had showed early interest but  
20 identified some flaws, some technical issues  
21 pertaining to their reactor pressure vessel that  
22 were resolvable but at great expense.

1                   And at that point it became an economic  
2 decision that it just wasn't worth the cost to make  
3 the necessary remedies to proceed with license  
4 renewal.

5                   In the case of Monticello, it's a little  
6 bit more complex; but to a certain extent there were  
7 some technical issues that would have been expensive  
8 for Monticello to resolve prior to being granted  
9 license renewal.

10                  But in addition to that, the state  
11 regulators placed a restriction on Monticello that  
12 the -- that there had to be a long-term resolution  
13 to the spent fuel storage issue as a precondition  
14 for proceeding with license renewal, so you had a  
15 couple issues there with Monticello.

16       Q.       Finally, in response to a question from the  
17 Hearing Examiner, you indicated that in the two  
18 instances where license renewal applications have  
19 been granted by the NRC, the facilities were  
20 involved -- that were involved were of a different  
21 design than ComEd's nuclear facilities.

22                  Do you recall that answer?

1       A.    I do recall that answer.

2       Q.    Why is that an important factor?

3       A.    Well, the design of at least the first  
4 couple Commonwealth plants that would probably  
5 request license renewal are boiling water reactors,  
6 and they bring with them a suite of technical issues  
7 that are -- some are known, some are not as well  
8 known, that overlapped to a certain extent some of  
9 the issues that have already been dealt with; but  
10 several of the technical issues have not been  
11 scrutinized in terms of the aging issue that's  
12 pivotal to the license renewal decision.

13               And I'm not predicting -- I don't want to  
14 predict doom and gloom, but until those technical  
15 issues are tested through the application process,  
16 there's more uncertainty than there otherwise would  
17 be with boiling water reactors.

18       MR. FELDMEIER:  We have --

19       THE WITNESS:  Let me add one thing to my earlier  
20 response in completeness.

21               The Yankee Atomic case is particularly  
22 instructive because as part of the discovery, the

1 technical review and the discovery that they went  
2 through to prepare their application for license  
3 renewal, they essentially identified a technical  
4 issue that caused them to go in early  
5 decommissioning. So there's that risk. That's  
6 something we haven't talked about, but there is that  
7 risk. It's caused some consternation in the  
8 industry.

9           But that's an additional and that's built  
10 into the regulation. The regulation for license  
11 renewal says that, hey, if you do identify something  
12 that is of sufficient significance, you have to  
13 resolve it real time. You don't have the option to  
14 ignore it. You have to deal with it. And depending  
15 on what the issue is, it could have that outcome.

16       MR. FELDMEIER: We'd have no further redirect.

17       JUDGE CASEY: Cross?

18                       (Change of reporters.)

19       MR. ROBERTSON: I'd like to -- I don't have  
20 sufficient copies, but I'd like to get the order  
21 approving transfer of license and conforming  
22 agreements in the Braidwood Station Units, I and II

1 from the Nuclear Regulatory Commission marked as  
2 IIEC Cross Exhibit 1.

3 JUDGE CASEY: It'd be actually 16.

4 MR. ROBERTSON: 16? Oh, we're going -- I'm  
5 sorry.

6 JUDGE CASEY: 16.  
7 (Whereupon, IIEC Cross  
8 Exhibit No. 16 was  
9 marked for identification  
10 as of this date.)

11 JUDGE CASEY: Mr. Robertson, what was the name  
12 of the document? It's an order?

13 MR. ROBERTSON: I'll read the title into the  
14 record.

15 JUDGE CASEY: You may already. I didn't catch  
16 it.

17 MR. ROBERTSON: It's an order approving transfer  
18 of license and conforming amendments issued by the  
19 United States Regulatory Commission in relation to  
20 Commonwealth Edison Company, Braidwood Station Units  
21 I and II dated the 3rd of August 2000.  
22



1                   RE CROSS - EXAMINATION

2                   BY

3                   MR. ROBERTSON:

4       Q.     And I'd like you to tell me where the NRC  
5 reserves the right in this order to consider further  
6 the transfer of the license?

7       MR. FELDM EIER:     Could he see a copy of that?

8       MR. ROBERTSON:     Yes.

9       MR. FELDM EIER:     I'd just object briefly.

10                  I think that mischaracterizes the exact  
11 answer the witness gave in response to your  
12 question.

13       THE WITNESS:     My response was that the NRC --

14       JUDGE CASEY:     Whoa, whoa, whoa.

15       JUDGE HILLIARD:     Well --

16       JUDGE CASEY:     The objection is that it  
17 mischaracterizes an earlier answer; is that the  
18 objection?

19       MR. FELDM EIER:     Yes, and it goes beyond the  
20 scope of what I asked him on redirect.

21       JUDGE CASEY:     Well, Mr. Robertson?

22 BY MR. ROBERTSON:

1 Q. If I understood your testimony on direct,  
2 you indicated that you would not expect the NRC to  
3 condition its order on the recovery of any amount of  
4 decommissioning by the electric utility; is that  
5 correct --

6 A. No.

7 Q. -- on the license?

8 A. As I understand your question, the answer is  
9 no.

10 Q. All right. Then is it your testimony that  
11 the NRC has preserved to itself the right to  
12 reconsider the transfer of the license if it doesn't  
13 like what the Illinois Commerce Commission does?

14 A. The order -- the order is contingent upon an  
15 acceptable instrument. And I read --

16 Q. And the instrument you're referring to would  
17 be the agreement between the transferee and the  
18 transferor --

19 A. I read the --

20 Q. -- is that correct?

21 A. -- read this sentence. It says, "The  
22 decommissioning trust agreements with Braidwood --

1 here Braidwood Units I and II at the time of the  
2 transfer of the units to Exelon Generating Company  
3 is effective. Thereafter -- and thereafter, are  
4 subject to the following: That the decommissioning  
5 trust agreements must be -- must be in a form  
6 acceptable to the NRC."

7 Q. All right.

8 A. And then it goes on -- okay.

9 Q. So you're saying that because they have the  
10 right and have reserved the right to review the  
11 nuclear decommissioning trust fund agreements  
12 themselves, you wouldn't expect them to condition  
13 their order on the recovery of a particular amount  
14 of money; is that correct --

15 A. Well.

16 Q. -- through --

17 A. That's correct.

18 Q. -- through the decommissioning rider?

19 A. They wouldn't. The NRC is not an economic  
20 regulator. It does not impose on the state  
21 regulator a prescriptive solution to doing this.

22 Q. What if it was against the law to transfer

1 the nuclear trust, isn't the NRC imposing a  
2 particular solution in its order here?

3           What if it was against the law in  
4 Illinois to transfer these trusts at all? Isn't the  
5 NRC imposing a solution here?

6       A.   Well, the NRC says -- I'm not sure it's  
7 imposing anything.

8           It just says that if you elect to fall  
9 through on the merger and transfer the licenses,  
10 then the trust agreements -- I'm just reading it  
11 again -- have to be acceptable to the NRC. So if  
12 it's against the law, then, presumably, it wouldn't  
13 happen. But if it happens, it has to be acceptable.

14       Q.   Okay. In your experience, do the trust fund  
15 agreements that are presented to the NRC  
16 traditionally deal with the management -- strike  
17 that.

18           Do they traditionally deal with deposits  
19 to, the management of, and distributions from the  
20 trust for nuclear decommissioning?

21       A.   I hate to ask you to restate that, but --

22       Q.   Do -- in your experience, do the trust

1 agreements that are presented to the NRC  
2 traditionally deal with contributions to, mechanics  
3 for that; distribution from, mechanics for that, the  
4 assets of the trust for nuclear decommissioning?

5 A. I don't have the sufficient experience to  
6 give you -- and the specifics of the financial --  
7 the specifics about each utility.

8 I -- I'm sorry. I can't -- I can't  
9 answer that question beyond what I've already  
10 answered.

11 Q. All right. So you cannot, as you sit here  
12 today, tell us whether or not some or any or none of  
13 the trust agreements approved by the NRC reference  
14 in any way the collection mechanism imposed by a  
15 state commission for decommissioning costs; is that  
16 correct?

17 A. That is correct.

18 Q. So you don't know, as you sit here today,  
19 whether or not the Commission has or will -- strike  
20 that.

21 MR. ROBERTSON: I have nothing further.

22 JUDGE CASEY: Any additional recross?

1 I have a couple questions.

2 EXAMINATION

3 BY

4 JUDGE CASEY:

5 Q. With respect to design differences, you  
6 indicate the two -- or the ones most likely to come  
7 up on the ComEd pipeline, if you will, are  
8 boiling --

9 A. Boiling water reactors.

10 Q. Boiling water reactors.

11 Are the two pending applications, you  
12 said that they were similar in design, are those  
13 also?

14 A. One of the two pending applications is of a  
15 design that's relatively close to the designs of the  
16 two lead Commonwealth stations.

17 Q. And with respect to the two abandoned or  
18 withdrawn applications, are you familiar with the  
19 design of those?

20 A. Yes. One -- one of those two, the Yankee  
21 Atomic Design, is an early generation, if you will,  
22 of boiling water reactors.

1 JUDGE CASEY: Okay. And any re-redirect?  
2 MR. FELDMEIER: No.  
3 JUDGE CASEY: Okay. The witness is excused.  
4 MR. FELDMEIER: Just so the record's clear,  
5 Edison Exhibit 9 and the portions of Exhibit 1 are  
6 admitted?  
7 JUDGE HILLIARD: 14?  
8 MR. FELDMEIER: 14. I apologize.  
9 JUDGE CASEY: Exhibit 9, rebuttal testimony of  
10 Joseph Callan is admitted. Exhibit 14, Question 1,  
11 the response thereto, the first paragraph and the  
12 first two sentences of the second paragraph and the  
13 answer in the second is admitted.  
14 Mr. Robertson, with respect to IIEC Cross  
15 Exhibit 16, you hadn't made a motion.  
16 (Whereupon, ComEd  
17 Exhibit Nos. 9 and 14 were  
18 admitted into evidence as  
19 of this date.)  
20 MR. ROBERTSON: I'll make a motion at this time.  
21 JUDGE CASEY: Is there any objection?  
22 All right. IIEC Cross Exhibit -- I'm

1   sorry, Mr. Feldmeier, did you have an objection?

2       MR. FELDMEIER:   No.  No objection.

3       JUDGE CASEY:    IIEC, the order approving  
4   transfer -- we'll call that document order approving  
5   transfer of Braidwood is admitted.

6                       (Whereupon, Cross  
7                       Exhibit No.  16 was  
8                       admitted into evidence as  
9                       of this date.)

10      JUDGE CASEY:    Yeah.  At this time, we're going  
11   to go off record.  Before everyone leaves the room,  
12   we'd like to get some time estimates for the  
13   remaining witness.

14                       So at this time, we're off the record.  
15   We will resume again at 1:15

16                       (Whereupon, a luncheon  
17                       recess was taken to resume  
18                       at 1:15 p.m.)

19                       AFTERNOON SESSION:  1:25 p.m.

20                       (Whereupon, Peoples  
21                       Exhibit Nos. 1.0 and 2.0 were  
22                       marked for identification)



1 JUDGE CASEY: We're back on the  
2 record.

3 The People have a witness; is that  
4 correct?

5 MR. KAMINSKI: Yes, your Honor.

6 (Witness sworn.)

7 JUDGE CASEY: Be seated.

8 JUDGE HILLIARD: Let the record show that we  
9 indicated we'd reconvene at 1:15 and it's now 1:25.

10 JUDGE CASEY: Mr. Kaminski?

11 MR. KAMINSKI: Yes.

12 DAVID J. EFFRON,  
13 called as a witness herein, having been first duly  
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MR. KAMINSKI:

18 Q. Please state your full name, spelling the  
19 last name for the court reporter.

20 A. David J. Effron, E-f-f-r-o-n.

21 Q. Are you the same David J. Effron that has  
22 prepared prefiled testimony in this docket?

1       A.    Yes, I have.

2       Q.    I show you now what has been marked Peoples  
3 Exhibit 1.0 for identification entitled Direct  
4 Testimony of David Effron on behalf of People of the  
5 State of Illinois consisting of 26 pages of  
6 questions and nine pages of attachments.

7       A.    Yes.

8       Q.    And are you familiar with Peoples  
9 Exhibit 1.0?

10      A.    Yes, I am.

11      Q.    Is this the prefiled direct testimony that  
12 you prepared in this docket?

13      A.    Yes, it is.

14      Q.    Are there any additions, modifications or  
15 corrections that you'd like to make?

16      A.    No.

17      Q.    And if I asked the same questions as the  
18 prefiled direct testimony, would your answers be the  
19 same?

20      A.    Yes, they would.

21      Q.    I now show you what is marked as Peoples  
22 Exhibit 2.0 --

1 A. Yes, I have that.

2 Q. -- for identification entitled Rebuttal  
3 Testimony of David Effron on behalf of the People of  
4 the State of Illinois consisting of six pages of  
5 questions and answers and three pages of  
6 attachments?

7 A. Yes, I have that.

8 Q. Are you familiar with Peoples Exhibit 2.0?

9 A. Yes, I am.

10 Q. Is this the prefiled rebuttal testimony that  
11 you prepared for this docket?

12 A. Yes, it is.

13 Q. Are there any additions, modifications or  
14 corrections that you would like to make?

15 A. No, there are not.

16 Q. If I asked the same questions in this  
17 prefiled rebuttal testimony, would your answers be  
18 the same?

19 A. Yes, they would.

20 Q. I show you now what is marked as Peoples  
21 Exhibit 2.1 for identification entitled Amended  
22 Rebuttal Testimony of David Effron.

1       A.    Yes, I have that.

2       Q.    And consisting of four pages of questions  
3 and answers and two pages of attachments?

4       A.    Yes, I have that.

5       Q.    Are you familiar with Peoples Exhibit 2.1?

6       A.    Yes, I am.

7       Q.    Is this the prefiled amended rebuttal  
8 testimony that you had prepared in this docket?

9       A.    Yes, it is.

10      Q.    Are there any additions, modifications or  
11 corrections you'd like to make to this testimony?

12      A.    No, there are not.

13      Q.    If asked the same questions in this amended  
14 rebuttal testimony, would your answers be the same?

15      A.    Yes, they would.

16      MR. KAMINSKI:   Your Honor, the People move for  
17 the admission of evidence -- of direct testimony of  
18 David Effron consisting of 26 pages of questions and  
19 nine pages of -- I'm sorry, questions and answers  
20 and nine pages of attachments as marked 1.0, and  
21 rebuttal testimony of David Effron consisting of six  
22 pages of questions and answers and three pages of

1 attachments marked as Peoples 2.0, and Peoples --  
2 the amended rebuttal testimony of David Effron  
3 consisting of four pages of questions and answers  
4 and two pages of attachments marked Peoples  
5 Exhibit 2.1, and tender the witness for  
6 cross-examination.

7 JUDGE HILLIARD: Any objections to those  
8 exhibits?

9 MR. MC KENNA: No objection.

10 JUDGE HILLIARD: All right. They'll be admitted  
11 subject to cross-examination.

12 (Whereupon, Peoples  
13 Exhibit Nos. 1.0 and 2.0 were  
14 admitted into evidence as  
15 of this date.)

16 CROSS-EXAMINATION

17 BY

18 MR. MC KENNA:

19 Q. Afternoon, Mr. Effron.

20 A. Good afternoon, Mr. McKenna.

21 Q. And I represent ComEd, as you're probably  
22 aware.

1                    Could we start with your educational  
2 background, please, sir. You have a bachelor's  
3 degree, as I understand it, from Dartmouth, right?  
4        A.     That's correct.  
5        Q.     And an MBA from Columbia?  
6        A.     That's right, yes.  
7        Q.     No degree in nuclear engineering, right?  
8        A.     I'm not an engineer.  
9        Q.     Okay. You're a certified public accountant?  
10      A.     Yes, I am.  
11      Q.     And you were an auditor and a consultant  
12 Touche Ross at one time?  
13      A.     That's correct. Now Deloit Touche.  
14      Q.     And you worked in capital investment  
15 analysis and controls at Gulf Western?  
16      A.     That's correct.  
17      Q.     And you've been a regulatory consultant for  
18 a number of years for different consulting firms?  
19      A.     I've been on my own about 18 years now. And  
20 total experience, I think, at this point is 22  
21 years.  
22      Q.     All right. It's right, is it not, that you

1 don't have any hands-on experience in radiologically  
2 decommissioning a nuclear power plant?

3 A. I've never been involved myself directly in  
4 decommissioning a nuclear power plant, no.

5 Q. And you don't hold yourself out in any  
6 fashion as a cost engineer?

7 A. I'm not an engineer. So in that regard, I'm  
8 not a cost engineer.

9 On the other hand, I am knowledgeable  
10 about some areas of cost, but not the engineering  
11 aspect in particular.

12 Q. But you're not a member of the American  
13 Society of Cost Engineers, for example?

14 A. I am not.

15 Q. Okay.

16 A. That's correct.

17 Q. All right. And you've not published any  
18 scientific peer-reviewed articles on the subject of  
19 nuclear engineering?

20 A. No, I have not.

21 Q. And you have haven't published any articles  
22 on the subject of cost estimating?

1       A.    I haven't published any articles on  
2 anything.

3       Q.    Okay.  In fact, no articles, no papers, no  
4 speeches, no presentations about nuclear power or  
5 divestiture of nuclear power or decommissioning of  
6 power plants?

7       A.    Or anything else, for that matter.

8       Q.    Okay.  All right.

9               Let's move away from your backgro und.  
10 Let's talk about your testimony.

11              Generally -- and I refer you to page 4 of  
12 your testimony, your direct testimony -- it is your  
13 contention that, at the time of a transfer of the  
14 power plants at issue to Genco, ComEd already will  
15 have collected adequate funds to provide for  
16 decommissioning?

17       A.    Yes.

18       Q.    And that no further funds need be collected  
19 from ratepayers by ComEd in connection with that  
20 transfer?

21       A.    That's correct, yes.

22       Q.    All right.  Now, I want to ask you some



1 questions about how you got there.

2                   And the first thing I'm going to do is  
3 take you through your amended rebuttal charts, but  
4 before we get there, I just want to understand.  
5 What you do, generally, in your analysis is you  
6 start with Mr. LaGuardia's cost studies, correct?

7       A.     That's correct, yes.

8       Q.     And then you adjust them in certain ways,  
9 right?

10      A.     I looked at the effect of making different  
11 adjustments, yes.

12      Q.     And you, in fact, made some adjustments,  
13 right?

14      A.     That's correct, yes.

15      Q.     And then you array the adjusted balances and  
16 make some projections of various types, earnings and  
17 so forth, right?

18      A.     Yes, using the assumptions as stated in  
19 here, correct.

20      Q.     And then you compare them to what you think  
21 is going to be in the trusts to what you think is  
22 going to be needed to be decommissioned based on

1 your adjustments right?

2 A. That's correct, yes.

3 Q. And in your initial testimony and what I'll  
4 call your base case, which I'm going to define as  
5 your no-license-renewal case. You with me,  
6 Mr. Effron?

7 A. I believe I understand the term as you're  
8 using it.

9 Q. In your base case in your initial direct  
10 testimony, what you conclude is, based on your  
11 adjustments, ComEd has 109.9 million in excess in  
12 the decommissioning trust, present value, right?

13 A. That's what the numbers came out with, yes.

14 Q. Okay. But in your amended rebuttal, you  
15 revise that conclusion, do you not?

16 A. Yes, I did.

17 Q. And what you really find in your amended  
18 rebuttal is that in the base case, ComEd is just  
19 barely sufficiently funded, right?

20 A. As it comes out, yes.

21 Q. One million dollars, right?

22 A. Which -- which is, for practical purposes, a

1 zero given the magnitude of the numbers we're  
2 talking about, yes.

3 Q. Now, let's turn to that page of your amended  
4 rebuttal testimony which is your Exhibit 2.1 and  
5 your chart DJE 1-B.

6 Do you have that, Mr. Efron?

7 A. Yes, I do.

8 Q. Okay. And when I'm talking about the base  
9 case, I'm talking about the second line of entries  
10 on your schedule DJE 1-B, right?

11 A. If that's the way you define it, fine. Yes.

12 Q. Well -- and what that does is that includes  
13 the adjustments that you proposed making in your  
14 direct testimony, right?

15 A. Correct.

16 Q. The escalation which you in your direct  
17 testimony say ComEd used, right?

18 A. That was the ComEd assumption, yes, the 4.11  
19 percent, yes.

20 Q. We'll come back to that, but that's what it  
21 is.

22 And then you've got for the without

1 license extension, that's where your  
2 one-million-dollar excess appears, right?

3 A. That's correct, yes.

4 Q. And as I understand it, the way you got to  
5 that one-million-dollar excess from your conclusion  
6 as expressed in your direct testimony is you made  
7 some adjustments based on unrealized taxes?

8 A. Yes, that's right.

9 Q. Now, I'd like you to hold onto DJE 1 -B and  
10 I'd like you to go to DJE 1 as attached to your  
11 direct testimony.

12 A. I have that, yes.

13 Q. Okay. And I just want to focus on the first  
14 column in DJE 1, so we all understand where you were  
15 in your direct and what you got to for your base  
16 case in your rebuttal.

17 That's first column is without license  
18 extension, right?

19 A. Correct.

20 Q. Okay. The first line item, 168.1, that's  
21 your conclusion based on your adjustments as to the  
22 operating units overfunding on a collective basis,

1 right?

2 A. Correct, yes.

3 Q. Okay. And then your second line is the  
4 deficiency of the closed units, right?

5 A. That's correct, yes.

6 Q. And that leads you to conclude,  
7 preliminarily, that you've got \$85 million  
8 deficiency in this case of your analysis in the  
9 decommissioning trust, right?

10 A. That's before I take into account the other  
11 sources of funds --

12 Q. Exactly.

13 A. -- available.

14 Q. Exactly. That's what I'm getting at.

15 Then you add in several more sources of  
16 funds, some prior collections, some '99 collections  
17 contributed in 2000 and some 2000 collections,  
18 right?

19 A. Correct.

20 Q. And when you add all those into this  
21 deficiency, you come up with your \$109.9 million  
22 overfunding, right?

1       A.    That's right, yes.

2       Q.    Now, going back to DJE 1-B, what happened  
3 was you realized that in calculating the amount in  
4 the decommissioning trusts, you failed to take into  
5 account some unrealized tax liabilities, right?

6       A.    That's correct, yes, that I had to go  
7 through a number of rounds of information requests  
8 to develop.

9       Q.    Okay. All right. But you finally found out  
10 that there was about \$150 million in gains on which  
11 taxes had not yet been paid that was incorporated  
12 into the total balances as of the end of '99 in the  
13 decommissioning trusts?

14      A.    That's correct, yes.

15      Q.    Okay. And what you said to yourself was,  
16 Well, gee. In true economic reality, those taxes  
17 will have to be paid and ought to be deducted in  
18 some way from the amount in the decommissioning  
19 trusts, right?

20      A.    Those taxes -- that tax liability of  
21 unrealized gains had not otherwise been recognized,  
22 so there would have to be some recognition of the --

1 of that tax liability, yes.

2 Q. And the way you went about doing that was  
3 you assumed that those taxes will be paid over a  
4 period of 7.8 years, right?

5 A. Based on the information I had then, I felt  
6 that was a reasonable assumption, yes.

7 Q. Okay.

8 A. And there had to be some assumptions as to  
9 what the payment period would be to figure out what  
10 the present value of that liability is.

11 Q. Right. And then by assuming that they would  
12 be paid over 7.8 years, you arrived at an annual  
13 pay-down amount and then that allowed you to then  
14 adjust the amount in the decommissioning trust for  
15 purposes of your analysis, right?

16 A. That's correct.

17 Q. And that's what led you to go from thinking  
18 in your direct that you were 109.9 overfunded to  
19 thinking in your amended rebuttal in the base case  
20 that you were one million dollars overfunded?

21 A. As you've defined the term base case, yes.

22 Q. Okay. Now, the tax issue, taxes are

1 actually incurred when gains in portfolios are  
2 realized, right?

3 A. That's correct.

4 Q. Okay. And what your -- what you're really  
5 doing when you say 7.8 years is you're trying to  
6 estimate when the gains that are in the portfolio as  
7 of the end of the year '99 will be realized, right?

8 A. That's correct, yes, because we can't know  
9 that with certainty as we sit here now.

10 MR. MC KENNA: Okay. I'm going to mark a cross  
11 exhibit here.

12 (Whereupon, Cross  
13 Exhibit No. 17 was  
14 marked for identification  
15 as of this date.)

16 BY MR. MC KENNA:

17 Q. Mr. Effron, what I've marked ComEd Cross  
18 Exhibit 17 is a ComEd data request response in the  
19 '99 reconciliation -- I'm sorry, in the '99  
20 decommissioning Rider 31 proceeding. It's a  
21 response to Staff Data Request FD 1.

22 Do you have that in front of you?



1       A.    I have that in front of me, yes.

2       Q.    And if you look at the second page, does  
3 that not give a -- an analysis of unrealized gains  
4 based on historic turnover ratio?

5       A.    It gives a calculation of the turnover ratio  
6 and then uses that turnover ratio to estimate what  
7 the realization period would be for the unrealized  
8 gains as of a point in time.

9               That's the way I would characterize it  
10 here, understanding this is the first time I've seen  
11 this.

12       Q.    Fair enough.

13               And that analysis, using the historical  
14 turnover ratio for the portfolios, includes that  
15 appropriate assumed period for realizing gains in  
16 the portfolio is three years, right?

17       A.    Based on the turnover ratio that's  
18 calculated here, that's what the assumption appears  
19 to be.

20       Q.    Right. And you used a 7.8 year assumption  
21 based on a different methodology, right?

22       A.    Yes, but mine was based on what the actual

1 gains were that were experienced in 1999, which was  
2 the highest of any of the three years that I had  
3 information for.

4 Q. But if you used a three-year ratio or a  
5 three year assumed period for realization of gain,  
6 your outcome in the amended rebuttal exhibit we've  
7 been looking at would be different in the base case,  
8 would it not?

9 A. No doubt it would be somewhat different.

10 Q. It would be a deficiency, would it not?

11 A. It would be a slight deficiency in that  
12 case, yes.

13 Q. Okay. Let's move on, if we could.

14 I want to talk now about the adjustments  
15 you made to Mr. LaGuardia's study in connection with  
16 the schedules that are attached to your direct  
17 testimony.

18 Now, what you did, as I understand your  
19 testimony, is you eliminated all of Mr. LaGuardia's  
20 contingency amounts, right?

21 A. Yes.

22 Q. Okay. However, if for a given plant, for a

1 given station -- not unit, but station,  
2 Mr. LaGuardia's estimate minus the contingency you  
3 take out is less than the NRC minimum for  
4 decommissioning, you go with the NRC minimum, right?

5 A. That was the convention I used, yes.

6 Q. Okay. So let's take a look at -- if you  
7 would, DJE 4, which is attached to your direct  
8 testimony.

9 And if you look at Column 5 -- are you  
10 with me, Mr. Effron?

11 A. I believe so.

12 Q. If you look at Column 5 of DJE 4, each of  
13 these entries in that column represents your  
14 considered opinion as to the appropriate amount of  
15 required decommissioning funds by station -- or I'm  
16 sorry. Actually, I take that back -- by unit,  
17 right?

18 A. By unit, yeah. That's an important  
19 distinction.

20 Q. Right. Okay. And you do that by unit  
21 because, in particular, in the case of the NRC  
22 minimums, those are calculated by units, right?

1       A.    They're calculated by units, yes.

2       Q.    And if we just go through Column 5 here, the

3       very first entry for Dresden II, that's an NRC

4       minimum, not a free-standing from-the-ground-up

5       decommissioning estimate, right?

6       A.    That's correct, yes.

7       Q.    And if you look at the third entry for Quad

8       I, that's an NRC minimum, right?

9       A.    Yes, that's correct.

10      Q.    And if you look at the fifth entry, LaSalle

11      I, that's an NRC minimum, right?

12      A.    That's correct.

13      Q.    And the same is true with Byron I and

14      Braidwood I, right?

15      A.    Yes, that's correct.

16      Q.    And what that tells us is that half of your

17      entries are NRC minimums and half are

18      Mr. LaGuardia's from-the-ground-up estimate

19      adjusted, right?

20      A.    That's correct. And I believe doing that on

21      a unit-by-unit basis here was an especially

22      conservative approach that I used, but it's an

1 assumption.

2 Q. Okay.

3 A. That's what it is.

4 Q. But what I want to make clear is, it's your  
5 assumption -- it's the assumption you're using in  
6 testifying to the Commission whether ComEd should be  
7 entitled to collect more funds from ratepayers to  
8 pay for decommissioning, right?

9 A. It's an assumption I used in this particular  
10 scenario, I'll use for lack of a better term; in  
11 this set of assumptions.

12 Q. And what you're saying to the Commission is,  
13 in your considered opinion for purposes of deciding  
14 whether ComEd and its rates should be entitled to  
15 recover more from ratepayers for decommissioning,  
16 you believe that in half of the units, the  
17 Commission should rely upon the NRC minimum, right?

18 A. That's what it comes out with in this -- in  
19 this particular, again, set of assumptions and that  
20 I used.

21 MR. MC KENNA: Okay. I'm going to mark another  
22 exhibit.

1 (Whereupon, Cross  
2 Exhibit No. 18 was  
3 marked for identification  
4 as of this date.)

5 BY MR. MC KENNA:

6 Q. Mr. Effron, what I've handed to you is a  
7 copy of ComEd Cross 18 which is a copy of an NRC  
8 regulation, 10 CFR 50.75, and it's where you find  
9 the table of minimum amounts.

10 If you notice section 50.75C is the table  
11 of minimum amounts, right?

12 It's at the bottom of the very first  
13 page.

14 A. Could I have that reference again?

15 Q. If you look at the bottom of the page where  
16 it says, "C" in parentheses, it says, "Table of  
17 minimum amounts," right?

18 A. Yes, I see.

19 Q. And if you go to the next page, the actual  
20 formula is there, right?

21 A. Yes.

22 Q. Which is where you got your NRC minimums

1 for, right?

2 A. Yes. Actually, I relied on ComEd's actual  
3 calculations --

4 Q. Okay.

5 A. -- but it's the same thing, yes.

6 Q. But that's where ComEd got it from?

7 A. Yes.

8 Q. Okay. Now, sir, I want you to look at the  
9 very first section of the regulation, if you would,  
10 because the last sentence of that first section  
11 appears right there under the title. It says, does  
12 it not, "The requirements of this section, in  
13 particular Paragraph C, which is the minimums of  
14 this section, are in addition to and not  
15 substitutions for other requirements and are not  
16 intended to be used by themselves by other agencies  
17 to establish rates."

18 It says that, doesn't it?

19 A. That's what it says, yes.

20 Q. So what the NRC is saying in this regulation  
21 is you can't use my minimums to establish rates in  
22 isolation, right, sir?

1       A.    If might have a moment.

2                I hate to get into a legal interpretation

3 of this.

4       Q.    Okay.  I don't want you to.

5       A.    I'm not an attorney.

6       Q.    Well, let me ask you a couple questions,

7 Mr. Effron.

8                You're not an attorney, right?

9       A.    I'm not an attorney.

10      Q.    You're not an NRC technical expert, right?

11      A.    I don't work for the NRC.

12      Q.    Okay.  I read the regulation to you

13 correctly, the way it reads, right?

14      A.    As I recall, yes.

15      Q.    Okay.

16      A.    Your words were an accurate representation

17 of what's here.

18      Q.    And you used NRC minimums for purposes of

19 taking a position with the ICC about whether and how

20 much ComEd should collect from ratepayers for

21 decommissioning, right?

22      A.    I used that as the bottom below which the



1 estimated cost wouldn't go.

2 I used it in a way that had the effect of  
3 increasing the allowance for decommissioning above  
4 what it would have been if I'd used either the --  
5 all the NRC minimums or all of the estimates  
6 excluding contingencies factors exclusive.

7 So I think I used it in a conservative  
8 way that -- again, I hate to get into a legal  
9 interpretation that I don't think would be  
10 inconsistent with my understanding of what's  
11 intended here.

12 Q. But, Mr. Effron, what I was trying to ask  
13 you is, very simply, it's true used the minimums for  
14 rate making purposes, did you not?

15 A. Ultimately, it would affect the rates, yes.

16 Q. Okay. Thank you.

17 Now, I want to talk about removal of the  
18 contingency allowances, which is sort of the one of  
19 the building blocks of your analysis in your direct  
20 testimony; would you agree?

21 A. I don't know -- I wouldn't use the term  
22 building block exactly.

1           Again, all I would say is that was one of  
2 several different sets of assumptions I looked at in  
3 my testimony.

4       Q.   All right.  And on Page 9, one of the things  
5 you did say in your direct testimony is that  
6 contingency allowances should not be included in the  
7 estimate of the cost of decommissioning that serves  
8 as the basis for determining the annual amounts  
9 necessary to fund the reasonable costs of  
10 decommissioning, right?

11      A.   Yes.

12      Q.   Okay.  And in support of that assertion by  
13 you at Page 9 of your testimony, you cited two  
14 different Commission orders, right?

15      A.   That's correct, yes.

16      Q.   You cited one from 1987, which was Docket  
17 No. 86-0125?

18      A.   Correct.

19      Q.   And another from 1995 which is Docket  
20 No. 94-0065, right?

21      A.   That's correct.

22      Q.   But you are aware, are you not, that in

1 1997, after those two particular decisions you  
2 relied upon came down, the Commission reversed  
3 itself and decided that contingency allowances were  
4 appropriate for Rider 31 collections by ComEd,  
5 right?

6 A. Yes, I'm aware of that.

7 JUDGE HILLIARD: Excuse me, Counsel. What page  
8 of the testimony were you on?

9 MR. MC KENNA: That was where he cites to those  
10 Commission orders is Page 12, Lines 1 to 18.

11 JUDGE HILLIARD: Thank you.

12 MR. MC KENNA: Would you mark this as the next  
13 exhibit, please.

14 (Whereupon, Cross  
15 Exhibit No. 19 was  
16 marked for identification  
17 as of this date.)

18 BY MR. MC KENNA:

19 Q. All right. And now, what I've marked as  
20 ComEd Cross Exhibit 19 is a copy of the Commission's  
21 decision in Docket No. 97-0110, Mr. Effron.

22 And you can look at any part of it you

1 want, but I'm concerned only with the Commission's  
2 analysis and conclusions at Page 9.

3 A. I'm on Page 9.

4 Q. Okay. And in that case, in the context of  
5 site-specific studies by Mr. LaGuardia, the  
6 Commission stated, "We are of the opinion that  
7 Mr. LaGuardia properly applied activity-by-activity  
8 contingency allowances which properly reflect  
9 unpredictable field problems which may arise,"  
10 right?

11 A. That's what he states, yes.

12 Q. And the Commission further said, "The  
13 Commission is satisfied that his --  
14 Mr. LaGuardia's -- past experience with  
15 decommissioning projects indicates that problems  
16 will occur to cause the decommissioning contractor  
17 to deviate from the optimal performance of the  
18 decommissioning task which is assumed in the cost  
19 estimate," right?

20 A. You read correctly.

21 Q. Okay. Now, you propose that task-by-task,  
22 activity-by-activity contingency allowances in

1 Mr. LaGuardia's cost studies which are in evidence  
2 here be removed, right?

3 A. Yes. Again, that was one of the scenarios I  
4 looked at.

5 Q. Okay. And as I understand it, one of the  
6 reasons that you suggest that -- and if you look at  
7 Page 10 of your testimony, Line 12 -- is contingency  
8 factors are inappropriate because ComEd has chosen  
9 to decommission its plants immediately after the  
10 cessation of their operations, right?

11 A. I think you have to read what was said in  
12 the context of the testimony.

13 Q. Okay. Well, you say -- you say there are  
14 three alternative decommissioning methods. You go  
15 through them. You then say in estimating  
16 decommissioning costs, the company has assumed  
17 immediate dismantling which is the most costly of  
18 the three, right?

19 A. That's correct.

20 Q. Then you say a sentence later, "Given that  
21 the company has assumed the most costly of the  
22 three, there is no need to further increase costs by

1 the addition of contingency allowances," right?

2 A. Well, the copy I have here, it's two  
3 sentences later.

4 Q. Okay. I'll accept that.

5 A. There's a sentence in between.

6 Q. But that's what you say, right?

7 A. What -- well, I think to get the meaning of  
8 it, that sentence in the middle should be taken into  
9 consideration, too, but the words that you used do  
10 appear on the page, yes.

11 Q. But isn't it a fact, sir, that contingency  
12 allowances don't have anything to do with what type  
13 of decommissioning process a company chooses to  
14 follow. They have to do with ensuring that there's  
15 sufficient funds on a task-by-task basis to  
16 decommission?

17 A. They don't directly have anything to do with  
18 the alternative that's assumed.

19 And, for example, getting to the next  
20 point I had here, they don't have anything directly  
21 to do either with whether the site restoration costs  
22 are --

1 Q. Let's hold on on site restoration.

2 A. But -- but what I was going to say is what  
3 we're trying to do here is to figure out what the  
4 amount that should be included in the cost of  
5 service is for the purpose of providing adequate  
6 decommissioning funding.

7 And I think all of these are related in  
8 that if you keep using a conservative assumption on  
9 conservative assumption and compounding them, in  
10 effect, what you're doing is building in more  
11 contingency factors.

12 Q. Well, let's stay real focused on my  
13 question, if we possibly could, Mr. Effron.

14 I'm right, aren't I, that contingency is  
15 for costs that are going to be incurred, but that  
16 cannot be readily quantified immediately, right?

17 A. I think a better description would be of  
18 costs that might be incurred, but that can't be  
19 quantified --

20 Q. Okay.

21 A. -- immediately.

22 Q. Or they're costs relating to a

1 high-probability event then that might occur, but  
2 that can't be quantified at the outset, right?

3 A. I haven't seen any specific analysis of the  
4 probabilities that those costs will be incurred.

5 Obviously, Mr. LaGuardia's opinion, he  
6 assigns a high probability to these costs being  
7 incurred, but I think that he describes  
8 circumstances under which some of the costs might  
9 not be incurred.

10 Q. Okay. But, in any event, if a contingency  
11 is defined as a cost that might occur, whether high  
12 probability or not, but you can't tell whether it  
13 will at the outset, there's no direct connection  
14 between that and the method chosen to decommission a  
15 plant, right?

16 A. There's no direct connection, but I believe  
17 there's a relationship similar to what I described.

18 Q. By the way, in your testimony here on  
19 Page 10, you refer to several different options for  
20 decommissioning, including something you call  
21 entombment followed by delayed dismantling, right?

22 A. That's one of the options I understand to



1 be, yes.

2 Q. But you agree with me, don't you, that  
3 entombment is not likely to be a valid option,  
4 right?

5 A. From what I've seen, that's not one of the  
6 options that ComEd has been considered.

7 Q. Well, and you agree with me, don't you, sir,  
8 that there is no NRC regulation detailing the  
9 process of entombment, right?

10 A. I believe that's correct.

11 Q. And it's also true, isn't it, that the NRC  
12 has announced to the public that entombment is not a  
13 likely prospect for a method of decommissioning for  
14 any power plant?

15 A. I -- I don't recall the explicit release  
16 that you're referring to, but I can accept that  
17 representation.

18 Q. And, in fact, can you accept, subject to  
19 check, that what the NRC has said about entombment  
20 is, "Because most power reactors will have  
21 radionuclides in concentrations exceeding the limits  
22 for unrestricted use even after a hundred years,

1 this option may not be feasible under current  
2 regulations"?

3 A. I'll accept that subject to check.

4 Q. And what they're talking about there is  
5 they're saying if you entomb a plant, that it will  
6 take longer than 60 years for radioactivity levels  
7 within that plant that's been entombed to come down  
8 to the background limits imposed by the NRC?

9 A. It sounded that way.

10 Q. And the NRC's regulations require that you  
11 get the job done of decommissioning within 60 years  
12 from the date you shut down, right?

13 A. I believe that's correct.

14 Q. And the hundred years comes in because you  
15 got a 40-year license and you got 60 years to get  
16 decommissioned, right?

17 A. Yes.

18 Q. So when you talk about entombment or  
19 immediate dismantling or safe storage, you're not  
20 talking about that from a standpoint of personal  
21 knowledge about what those things involve or even  
22 which one of them's permitted?

1       A.    I was relying on Mr. LaGuardia's studies in  
2   that regard.

3       Q.    All right.

4       A.    I believe he addressed each of these three  
5   options.

6       Q.    Okay.  Now, we're ready to talk about site  
7   restoration, and that's Page 11 of your testimony.  
8   And that's a third reason, as I understand your  
9   testimony at Line 11 of Page 11, that you believe a  
10  contingency factor is inappropriate, right?

11      A.    Yes, that's what it states here.  Site  
12  restoration costs are included.  Then, again, what  
13  you would be getting into is what I described before  
14  that, that compounding contingency scenario.

15      Q.    A couple background questions first.

16                You understand that Mr. LaGuardia has  
17  money in his cost estimates for nonradiological  
18  decommissioning, right?

19      A.    Yes, he does.

20      Q.    And you don't purport to have the expertise  
21  to say he's right or wrong from a nuclear  
22  decommissioning standpoint to have them in his

1 estimate, right?

2 Do you understand my question?

3 A. I understand the question. I'm not sure  
4 there is any expert answer to that.

5 It's a matter of definition, I guess, as  
6 to what decommissioning entails.

7 Q. Let me try it a different way.

8 Among other things, you agree with me  
9 that Mr. LaGuardia says decommissioning is a --  
10 radiological decommissioning -- which we all agree  
11 is required, right?

12 A. I don't think there's any dispute on that.

13 Q. -- is a destructive process, right?

14 A. Yes.

15 Q. And he says based on that, you're not going  
16 to be able to avoid doing something beyond  
17 radiological decommissioning, right?

18 A. I -- I read his studies and I understood him  
19 to be saying that perhaps there would be a situation  
20 where the site restoration wouldn't be required.

21 Q. But let me follow-up.

22 You've read his studies, but you don't

1 have any independent knowledge, for example, about  
2 how destructive radiological decommissioning process  
3 will be for any given plant, right, other than what  
4 you read in his study?

5 A. I think, by definition, it's a destructive  
6 process. That's what you're doing. You're  
7 destroying the structures and removing them and --

8 Q. But, Mr. Effron, my question is, you don't  
9 have any personal knowledge; you haven't done it  
10 yourself; you haven't been out there at a site after  
11 it's been done; you haven't reviewed videotapes,  
12 right?

13 A. I haven't done it myself, no.

14 Q. All right. Now, what you say on Page 11 in  
15 the sentence that begins on Line 13 is, "It is my  
16 understanding" -- referring back to nonradiological  
17 decommissioning -- "that this goes beyond NRC  
18 requirements." Then you also say that this goes  
19 beyond the requirements of Illinois law, right?

20 A. That's my understanding, yes. I'm not  
21 trying to offer a legal interpretation, but I'm  
22 saying it's my understanding.

1 Q. And that's what I'm getting at, Mr. Effron.

2 When you say something's your  
3 understanding, first of all, you're not trying to  
4 cite NRC regulations to us, right?

5 A. I'm certainly not trying to cite it when I  
6 talk about the requirements -- what my understanding  
7 is of the requirements of Illinois law, no. And I'm  
8 not trying to cite the NRC requirements in relation  
9 to the site restoration.

10 I'm relying on the expertise of others in  
11 that regard.

12 Q. Because you don't have personal knowledge  
13 sufficient with respect to the full body of NRC  
14 regulations relating to decommissioning to say one  
15 way or another which regulation does or doesn't  
16 require nonradiological decommissioning, right?

17 A. I -- I -- in that particular item, I relied  
18 on what Mr. LaGuardia himself said in his own  
19 studies.

20 Q. And with respect to -- and with respect to  
21 the requirements of Illinois law, as you said,  
22 you're not a lawyer, right?

1       A.     That's correct.

2       Q.     You're not a land use expert, right?

3       A.     No, I'm not.

4       Q.     And you haven't reviewed the county's code

5       or the municipal code with respect to what happens

6       if a hazardous structure exists, right?

7       A.     That's correct.

8       Q.     Nor have you reviewed the building code of

9       any of the counties or towns in which a nuclear

10      station is located, right?

11      A.     I have not done that, no.

12      Q.     You're saying what you say in this testimony

13      because of what other people said, right?

14      A.     What other people have said or what -- what

15      I've read in studies or Commission orders and that

16      kind of thing.

17      Q.     Now, you also suggest at this same page or

18      perhaps the following page that the reason

19      contingency factors should be excluded in your

20      analysis is because there are site restoration costs

21      built into Mr. LaGuardia's study, right?

22      A.     In this particular -- again, this particular

1 set of assumptions, that's correct.

2 Q. But, again, I'm right, am I not, sir, that  
3 there's no direct nexus or connection between  
4 contingency factors line by line, task by task in  
5 Mr. LaGuardia's study and site restoration costs,  
6 right?

7 A. There's no direct link, but, again, I would  
8 say that they're related in the sense that by  
9 including costs that might not be incurred such as  
10 the site restoration; to me, that, in effect, is a  
11 contingency.

12 Q. But you're not -- I'm sorry.

13 But you're not trying to tell the  
14 Commission, Mr. Effron, that contingency costs which  
15 you think should be removed from Mr. LaGuardia's  
16 study, when considering what to do in terms of  
17 whether ComEd should recover more from ratepayers,  
18 that those have some direct connection with site  
19 restoration costs?

20 A. They're not the same thing. I mean, I think  
21 I've explained my testimony on what the relationship  
22 is.



1 Q. Okay. Let's turn to Page 16 of your  
2 testimony, please.

3 And the point here, as I understand your  
4 testimony, sir, is that you think that investment  
5 earnings on the decommissioning trusts are going to  
6 exceed increases over time in decommissioning costs,  
7 right?

8 A. Again, depending on the assumptions that you  
9 use, yes.

10 Q. And the assumption you used in your base  
11 case was 4.11 percent, right?

12 A. 4.11 percent is the escalation factor that I  
13 used --

14 Q. Right.

15 A. -- in this case, yes.

16 Q. And then you assumed a 7.4 percent earnings  
17 rate on the trust fund balances, right?

18 A. I assumed 7.4 percent on the trust fund  
19 balances prior to the beginning of the actual  
20 decommissioning process and 5.9 percent subsequent  
21 to the commencement of the decommissioning process.

22 Q. Fair enough. And what that means is, at

1 least with respect, for example, to Braidwood II,  
2 what you assumed was that there would be a positive  
3 differential between earnings rate and escalation of  
4 decommissioning costs of 3.29 percent -- that's the  
5 math -- for 27 years, right?

6 A. When you say I assumed, that's correct, but  
7 what I did was adopt ComEd's assumptions.

8 Q. Okay. Well, now I'm going to come to that.

9 Because don't you agree with me, sir,  
10 that 4.11 percent is not the rate that ComEd  
11 believes is likely or is supported by the evidence?

12 A. You'd probably be better advised to ask that  
13 of the ComEd witnesses as to what they believe or  
14 don't believe.

15 The assumption that I saw stated is 4.11  
16 percent. I do understand there have been references  
17 to other potential escalation factors.

18 Q. Just to be clear, while we're getting this  
19 exhibit marked, it's not your testimony that ComEd  
20 believes 4.11 percent is the --

21 MR. KAMINSKI: I believe it's already.

22 MR. MC KENNA: -- appropriate escalation factor?

1 MR. KAMINSKI: I believe he's already stated he  
2 doesn't know what ComEd believes.

3 JUDGE HILLIARD: I'll sorry. He doesn't know  
4 what?

5 MR. KAMINSKI: He's already answered that he  
6 doesn't know what ComEd believes. So how can he --  
7 this question is inappropriate.

8 He answered that with the last question.

9 JUDGE CASEY: Mr. McKenna, what was your  
10 question again?

11 MR. MC KENNA: You know, I'll withdraw the  
12 question, since we'll get this marked and we'll get  
13 moving.

14 (Whereupon, Cross  
15 Exhibit No. 20 was  
16 marked for identification  
17 as of this date.)

18 BY MR. MC KENNA:

19 Q. Mr. Effron, what I've put in front of you as  
20 ComEd Cross Exhibit No. 19 is ComEd's response --

21 JUDGE CASEY: This is 20. You're up to 20. 19  
22 was the '97 order.

1 MR. MC KENNA: Thank you.

2 BY MR. MC KENNA:

3 Q. Mr. Effron, I've got in front of you ComEd  
4 Cross Exhibit 20, which is ComEd's response to the  
5 Attorney General's data request No. 3, Items 19 to  
6 27. And this is, in particular, AG 26, right?

7 Right?

8 A. Yes, it is.

9 Q. And that's who you were hired by in this  
10 case, the AG, right?

11 A. Yes.

12 Q. And that's who you're here representing,  
13 yes?

14 A. Yes. I think, technically, it's the People  
15 of the State of Illinois.

16 Q. Fair enough. But it's your client who asked  
17 this data request, right?

18 A. Yes.

19 Q. And the response to this data request I'm  
20 sure you've seen, right?

21 A. I've seen this.

22 Q. And in the response, ComEd explains, if you

1 look about halfway down the response, first  
2 paragraph, "4.11 percent cost escalation is not the  
3 rate supported by the testimony in Docket  
4 No. 99-0115, right; that's what they say?

5 A. Let's see. That's what it says, yes.

6 Q. Okay. And then it goes on and talks about  
7 the rate being actually more like eight percent and  
8 reduced to 4.74 for a bandwidth -- I'm not asking  
9 you to agree with that, okay?

10 But that's what they said, right?

11 A. That's what it says here.

12 Q. Okay. And they go on to explain in the next  
13 paragraph why 4.11 appears in their papers in this  
14 case, right?

15 A. If I might have a second --

16 Q. Go ahead.

17 A. -- just to refresh my memory.

18 MR. KAMINSKI: Can I have that last question  
19 read back, please?

20 (Record read as requested.)

21 (Discussion off the record.)

22 THE WITNESS: It states here why the 4.11

1 percent was used in the response to the Attorney  
2 General's first set of information requests,  
3 Question 4.

4 BY MR. MC KENNA:

5 Q. Okay. Now, I'm not asking you to accept  
6 what they say, but it's true when you saw this data  
7 request response, you knew that ComEd's position  
8 was, Hey, 4.11 percent escalation factor is  
9 something we derived. It's not something we believe  
10 reflects the proper formula for escalation of  
11 decommissioning costs, right?

12 A. It could be interpreted that way.

13 Q. Okay.

14 A. On the other hand, this was the assumption  
15 that ComEd used in its -- in the exhibits that  
16 support the cost of service, the decommissioning  
17 expense it was seeking.

18 So, to me, I thought that was the  
19 assumption. I guess, here, what you're saying,  
20 well, in some places, it's not the right assumption.

21 Q. Okay. Now, in your direct testimony, when  
22 you calculated various cases -- let's stick with

1 your base case, okay -- because the only escalation  
2 rate you used in your direct testimony was 4.11,  
3 right?

4 A. Could I have a moment.

5 Q. Go ahead.

6 A. No, that's not right.

7 I think if you look at page -- Pages 23  
8 and the pages that follow there -- that's my direct  
9 testimony. And I'm hoping the page numbering is  
10 the same in the copy that I have and the copy that  
11 you have.

12 But, in any event, it's the part that  
13 begins Roman numeral III, Part B, Section 4 of my  
14 testimony. I discuss a couple different escalation  
15 factors.

16 Q. Well, that's my fault. I didn't ask a good  
17 question.

18 Your charts in which you construct your  
19 various scenarios as to whether the trusts are  
20 underfunded or overfunded DJE 1, 2, 3, 4 -- and I  
21 believe that's it -- they all exclusively relied  
22 upon 4.11 percent escalation; isn't that right, sir?

1       A.    The -- the exhibit in my -- the schedules to  
2 my direct testimony all use the 4.11 percent  
3 escalation factor, correct.

4               In the text of the testimony, I discuss  
5 the effect of using different escalation factors  
6 assumptions.

7       Q.    And that's clear from Page 5 of Schedule  
8 DJE 2 where you summarize your assumptions for all  
9 your decom analysis, including your 4.11 percent  
10 escalation factor, right?

11      A.    Yes.

12      Q.    So I'm right then that you didn't construct  
13 your own escalation factor or try to create an  
14 alternative one for purposes of the schedules which  
15 were attached to your direct testimony?

16      A.    With those limitations, what you're saying  
17 is correct, yes.

18      Q.    Then in your rebuttal testimony, you do  
19 introduce a new escalation factor that you calculate  
20 yourself, right?

21      A.    No, I wouldn't characterize it that way.

22               With the new escalation factors, the



1 other escalation factors were addressed in my  
2 original testimony. I put it in Tab No. 4 in the  
3 rebuttal testimony.

4           If you're referring to 3.7 percent,  
5 though, that was introduced for the first time in  
6 the rebuttal testimony.

7       Q.    Thank you. That's what I'm referring to and  
8 that appears on, I guess, the third page of your  
9 testimony there, right?

10       JUDGE CASEY:   Of which rebuttal, the amended  
11 rebuttal or --

12       MR. MC KENNA:   This is the original rebuttal.  
13 Not the amended rebuttal.

14       BY MR. MC KENNA:

15       Q.    Page 3, Line 3, right?

16       A.    Yes, I discuss the alternatives there on  
17 Page 3, Lines 23 through 7.

18       Q.    And the detail behind it, to the extent  
19 you've got it, is in your Schedule DJE 2A?

20       A.    It's summarized there, yes.

21       Q.    All right. And let's look at that, if we  
22 could.

1                   As I understand your conclusion, you  
2   calculated a BWR and a PWR cost escalation rate,  
3   right?

4       A.    Yes.

5       Q.    And the PWR is 3.8 and the BWR is 3.7?

6       A.    No.  No, no.  The PWR is 3.6 percent  --

7       Q.    I see.

8       A.    -- and the BWR is the 3.8 percent.

9       Q.    And then you said, well, let's say the mid  
10   point between those two is 3.7 percent?

11      A.    That's right.

12      Q.    Okay.  But I am right, am I not, that you  
13   did not use the escalation formula approved by the  
14   Commission for Rider 31 proceedings, right?

15      A.    I'd have to go back and look at that again.

16      Q.    Well, let's  --

17      A.    My understanding was that the format was  
18   generally the same.

19      MR. MC KENNA:  Well, let's  -- let's investigate  
20   that.

21

22

1 (Whereupon, Cross  
2 Exhibit Nos. 21 and 22 were  
3 marked for identification  
4 as of this date.)

5 BY MR. MC KENNA:

6 Q. Okay. Let's look at what we marked 21  
7 first.

8 A. I'm not sure which one that is.

9 Q. That would be the Rider 31 decommissioning  
10 expense adjustment clause --

11 A. I have that.

12 Q. -- based on the '97 decision.

13 Now, if you look at the second page, sir,  
14 you'll see defined term bearing the letter E,  
15 decommissioning escalation factor; you see that,  
16 sir?

17 A. I see that, yes.

18 Q. And that has certain weights to be applied  
19 to wages, to be applied to other decommissioning  
20 costs, and to be applied to burial escalation,  
21 right?

22 A. Yes.

1 Q. And what it says, for example, 30 percent  
2 weight to be assigned to a burial escalation factor  
3 and a 33 percent weight to other, and a 37 percent  
4 weight to wages, right?

5 A. That's what it states, yes.

6 Q. Okay. Now, that's not what you did in your  
7 DJE 2A analysis, correct?

8 A. That's not the way I weighted it, that's  
9 correct.

10 Q. And, in fact, the way you weighted it was  
11 the exactly the way the NRC, not the ICC, says to  
12 weight it.

13 If you look at Page 2 of ComEd  
14 Exhibit 22, you weighted it 65 percent energy, 13  
15 percent -- I'm sorry, 65 percent labor, 13 percent  
16 energy, and 22 percent burial?

17 A. Yes, that's correct.

18 Q. So when you went out to reconstruct an  
19 escalation factor, you didn't use the ICC's formula;  
20 you used the NRC's formula, right?

21 A. That's the formula I used, yes.

22 Q. Okay. And that formula resulted in

1 significant additional weights being placed, for  
2 example, on labor than the ICC requires to be placed  
3 on labor, right?

4 A. The weight on labor is higher, that's  
5 correct.

6 Q. And the weight on -- and the weight you  
7 placed on low-level waste burial is only 22 percent  
8 as opposed to the ICC's required 30 percent?

9 A. That's correct.

10 And to close the circle, the weight I  
11 placed on the energy portion was less than the ICC.

12 Q. Because you used the NRC?

13 A. Yeah.

14 Q. And you didn't go out and study and, you  
15 know, try to determine which would be better to use,  
16 right?

17 A. No, I didn't.

18 Q. You just used the NRC and came up with 3.7  
19 percent, right?

20 A. That's what it comes up with.

21 Q. A lot lower than the 4.11 or any of these  
22 other numbers we were looking at, right?

1       A.    I don't know about the lot lower.  It is  
2 what it is.  It's a little lower.

3       Q.    Okay.  Also your DJE 2A, Mr. Effron, has an  
4 as annual rate of increase calculated for low-level  
5 burial of 8.13 percent, right?

6       A.    Yes, for the years indicated.

7       Q.    Okay.  And the way you did that is you took  
8 the table which appears on Page 2 of ComEd  
9 Exhibit 22, the NRC's new reg, 1307 revision 8,  
10 Table 2.1, and you used those values, didn't you?

11      A.    The sources are indicated on the schedule  
12 here.  I used the responses to the data requests  
13 that are shown there.  That one was from response to  
14 AG Data Request 4-I-29.

15      Q.    Okay.  Well --

16      A.    I didn't go back and check that --

17      Q.    Well, why don't you just stick with me for a  
18 second then.  That's fine.

19                But I'm right, aren't I, that you took  
20 the '93 and the '98 values, which I know you say you  
21 got from the data request response.  That's fine --  
22 the same values exactly for South Carolina are found

1 on this Table 2.1, right?

2 A. I'll accept that subject to check.

3 (Whereupon, there was a  
4 change of reporters.)

5 Q. Okay. You can look at right there. There  
6 is a 98 number and a 93 number, and that is what  
7 they are.

8 A. Yeah. That is increased.

9 Q. Okay. But, in fact, if you calculate the  
10 increased low-level burial escalation rate the way  
11 you did, based on the numbers in this Table 2.1, you  
12 include South Carolina taxes in that number, don't  
13 you?

14 A. I did not try to get behind the numbers. I  
15 relied on the response to the information request  
16 and said the numbers were on a comparable basis.

17 Q. Let me show you another exhibit.

18 JUDGE CASEY: Mr. McKenna, is this an additional  
19 exhibit? Could it be used to impeach or refresh  
20 recollection. We are getting a lot of exhibits  
21 here, and I want to make sure we are putting in  
22 exhibits that belong.

1 MR. MCKENNA: This is to impeach his 8.13  
2 percent.

3 MR. REVETHIS: We are particularly sensitive as  
4 to this one. We went through this once in  
5 Mr. Riley's testimony.

6 JUDGE CASEY: And this is going to be ComEd Cross  
7 23.

8 MR. MCKENNA: ComEd 23.

9 BY MR. MCKENNA:

10 Q. ComEd 23, which is an excerpt of  
11 Mr. Riley's testimony in the '99 Rider 31 case has a  
12 Table 3.2 in it, doesn't it, sir?

13 A. That is what it says.

14 Q. And he calculates a five-year escalation  
15 factor for burial costs at Barnwell that is very  
16 different from your 8.13, does he not?

17 Look at the five-year compound inflation  
18 rate for BWRs at 17.6 and for PWRs at 16.3, right,  
19 sir?

20 A. That is what he calculated. That is what  
21 the numbers say here.

22 Q. And if you look at footnote 14 and 15 on



1 that same page, he tells you why it is different  
2 from yours, doesn't he?

3 He says, South Carolina State disposal  
4 tax was subtracted from the totals provided in New  
5 Reg. 1307, Revision 8, which is ComEd Cross Exhibit  
6 22. That is what he says, right, sir?

7 A. That is what it says there. I did not do a  
8 comparison of this to what I came up with.

9 Q. Because you don't know, right?

10 A. I have not seen this before.

11 Q. But you don't know whether or not what you  
12 came up with, 8.13 includes tax or does not include  
13 tax?

14 A. As I said, I did not try to get behind the  
15 numbers. I relied on the response which said the  
16 numbers were comparable. If you want to --

17 Q. I want you to do one thing for me, which is  
18 go back to, if you can find it in your pile, ComEd  
19 Exhibit 19, which is the '97 Rider 31 decision of  
20 the ICC. Not if you are looking at an NRC reg. You  
21 need to find ComEd 19 which has the 97-0110 docket  
22 number on it.

1       A.     Okay.

2       Q.     And go to page 10 of that, sir.  Are you  
3 with me, sir?

4       A.     I am with you.

5       Q.     The Commission finds in that case, in the  
6 '97 Rider 31 case in that first full paragraph, that  
7 the South Carolina tax is a surcharge.  And then  
8 skipping a few words.  You can read them all if you  
9 want.

10               Moreover, the Commission finds the taxes  
11 unrelated to the escalation of costs at an Illinois  
12 waste disposal facility, right?

13       A.     That is what it says.

14       Q.     So if you, in fact, included the tax when  
15 you calculated this 8.13 percent low level burial  
16 waste escalation rate off of the New Reg 1307 table,  
17 you did it contrary to the finding of the Commission  
18 in this case, right?

19       JUDGE CASEY:  When you say this case, you mean  
20 the '97 docket.

21       MR. MCKENNA:  '97 case.  I'm sorry.  Yes.

22       BY MR. MCKENNA:

1 Q. Right, sir?

2 JUDGE HILLIARD: Mr. McKenna, your hour is about  
3 up. Are you fairly close to wrapping this up.

4 MR. MCKENNA: Yes, I am very close, your Honor.

5 BY MR. MCKENNA:

6 Q. Right, sir?

7 A. If I could just have a second here.

8 It appears that those numbers include the  
9 South Carolina taxes that the Commission is  
10 referring to here. It would not be consistent with  
11 what the Commission stated here.

12 Q. And the 8.13 percent that you calculated in  
13 your rebuttal testimony factored into your overall  
14 3.70 percent conclusion, right?

15 A. It did, yes.

16 Q. So if it is wrong, the 3.7 is wrong?

17 A. Other things equal, the 3.7 -- wrong is --  
18 it would not be consistent with excluding the tax.  
19 Put it that way.

20 Q. Last point. Under ComEd's revised proposal,  
21 as expressed by Mr. Berdelle in his rebuttal  
22 testimony, Genco assumes all risk of underfunding,

1 right?

2 A. I believe that is the general gist of what  
3 he is proposing, without having seen all of the  
4 details of his proposal, but it sounds that way.

5 Q. And he also states that any surplus in the  
6 trusts collectively at the end of the last plant's  
7 decommissioning will be returned to ratepayers,  
8 right?

9 A. He stated that, yes.

10 Q. And assuming what he stated is true and can  
11 be properly enforced, do you agree that that means  
12 that there is no potential, quote, substantial  
13 windfall to investigators as you testified to at  
14 page 13 of your testimony?

15 A. Given that that would eliminate any problems  
16 associated with the problem of a windfall to  
17 investors. I think there is other matters that have  
18 to be addressed, but it would eliminate the problem  
19 of a windfall.

20 MR. MCKENNA: Thank you, Mr. Efron. Nothing  
21 further.

22 JUDGE CASEY: Any additional cross.

1 MS. DOSS: I have some.

2 CROSS -EXAMINATION

3 BY

4 MS. DOSS:

5 Q. Good afternoon, Mr. Efron.

6 A. Good afternoon, Ms. Doss.

7 Q. Lieujana Doss on behalf of the People of  
8 Cook County.

9 I would like for you to refer to ComEd  
10 Cross Exhibit 22. Do you have that which was New  
11 Reg 1307?

12 A. Yes, I do.

13 Q. Now, do you recall a question by  
14 Mr. McKenna indicating with respect to the South  
15 Carolina tax?

16 A. I recall those questions.

17 Q. Okay. Now, do you know if you can find what  
18 the South Carolina tax is within New Reg 1307, which  
19 is ComEd's Cross Exhibit 22?

20 In other words, do you know the amount  
21 from New Reg 1307?

22 A. As I sit here, I do not know the amount of

1 tax that is in here. I don't know whether I could  
2 determine it by going through all of the materials  
3 or not, but as I sit here, I could not tell you the  
4 amount.

5 Q. And do you know if you could -- do you know  
6 if New Reg 1307 even contains the amount of the  
7 South Carolina tax?

8 A. I don't know if it is in here or not without  
9 having what appears to be a fair amount of time to  
10 review it.

11 Q. Now, why did you go to Table 2.1 and  
12 determine your escalation rate for low-level waste?

13 A. As I said, actually, I did not go to 2.1. I  
14 went to the response to AG 4-29 -- fourth set, No.  
15 29. And I relied on that response for the numbers  
16 that I used in my schedule.

17 Q. AG's data response 4-29?

18 A. It is AG fourth set, No. 29.

19 Q. Okay. Now, you were also handed ComEd Cross  
20 Exhibit 21.

21 A. If you could describe that for me.

22 Q. Which is Rider 31, the decommissioning

1 expense adjustment clause?

2 A. I have that.

3 Q. Now, if you would turn to page 2 of that and  
4 where it says B, could you read what it says for  
5 burial escalation rate?

6 A. B equals burial escalation rate based on the  
7 average annual rate of escalation excluding  
8 surcharges for the most recent three years for waste  
9 burial at the Barnwell facility contained in the  
10 latest revision to NRC New Reg 1307.

11 Q. Now, based on your reading of that, would  
12 you look at New Reg 1307 to determine your  
13 escalation rate?

14 A. Consistent with this formula the way it is  
15 presented here, yes, it sounds like you would go to  
16 New Reg 1307.

17 MS. DOSS: All right. No further questions.

18 JUDGE HILLIARD: Anybody else have any questions?  
19 Mr. Effron, do you have an opinion about -- do you  
20 have an opinion about the most reasonable escalation  
21 rate for nuclear decommissioning costs.

22 THE WITNESS: The opinion I have is highly

1 judgmental. I don't have a problem with the  
2 4.11 percent that was the -- to use Mr. McKenna's  
3 term, the basic assumption that I used for  
4 escalation. It is something -- there is obviously a  
5 lot of guesswork thrown in.

6           You are going out for 20, 30 years or  
7 more and even without the -- I call it the wild card  
8 of the burial, however you factor, it is not hard to  
9 estimate labor or energy, for example, going out  
10 that far. But as I said, I am comfortable with the  
11 4.11 percent.

12       JUDGE HILLIARD: That is all I have.

13       JUDGE CASEY: Before we go on to redirect, Mr.  
14 McKenna, were you going to make a motion as to all  
15 of the cross exhibits that you have tendered to the  
16 bench so far?

17       MR. MCKENNA: Yes. We move to admit them.

18       MR. ROBERTSON: I have an objection to Exhibit  
19 22.

20       JUDGE CASEY: I'm sorry.

21       MR. ROBERTSON: I have an objection to Exhibit  
22 22, Cross Exhibit 22.



1 JUDGE CASEY: State your objection,

2 Mr. Robertson.

3 MR. ROBERTSON: Yes. It is my understanding that  
4 this was presented to the witness in relation to  
5 whether or not he was to remove certain taxes from  
6 his --

7 JUDGE HILLIARD: You are going to have to come up  
8 closer.

9 MR. ROBERTSON: It was my understanding that this  
10 document was presented to the witness in relation to  
11 questions about whether or not he had removed  
12 certain taxes from the charge, and this document is  
13 at least 50 pages long. I don't know exactly what  
14 is in here. I fail to see the need to put this into  
15 the record at all because I don't know who is going  
16 to refer to it or for what purpose they will refer  
17 to it. And, obviously, I don't think this whole  
18 document can relate to the issue that was the  
19 subject of the question.

20 MS. DOSS: Your Honor, this exhibit was already  
21 admitted in the '99 docket.

22 MR. ROBERTSON: All right. Then I withdraw my

1 objection.

2 MS. DOSS: Well, it was a Cook County cross  
3 exhibit, but my concern is that there may be some  
4 confusion as far as if we cite to different exhibits  
5 so.

6 JUDGE CASEY: Given the fact that we don't know  
7 what exhibit number it was given in the '99 docket,  
8 at least I don't, and also given the fact that Mr.  
9 McKenna's questions were directed to page 2 of  
10 that -- of this particular exhibit -- Mr. McKenna,  
11 is there anything else within this large package  
12 that refers to or deals with the questioning that  
13 you had dealing with page 2.

14 MR. MCKENNA: Only page 2 dealt with my questions  
15 to this witness. There are relevant portions, but  
16 it is already in the record.

17 JUDGE CASEY: Given the fact that the remainder  
18 of this is already in the record, would it be --

19 MS. DOSS: If you would like --

20 JUDGE CASEY: Pardon.

21 MS. DOSS: If you would like, I could find out  
22 which exhibit it was.

1 JUDGE CASEY: I don't think that is going to be  
2 necessary because I think Mr. McKenna is willing to  
3 withdraw everything after page 2 given the fact that  
4 the remainder is already in the '99 docket. Is that  
5 right, Mr. McKenna.

6 MR. MCKENNA: Yes, that's correct.

7 JUDGE CASEY: So that the record is clear, the  
8 ComEd Cross Exhibits 17 through 23 will be admitted.  
9 The Cross Exhibit 22 specifically is admitted  
10 through page 2. The remainder will be removed.

11 (Whereupon, ComEd Cross  
12 Exhibit Nos. 17 through 23  
13 were admitted into  
14 evidence.)

15 JUDGE CASEY: Redirect. Are you prepared for  
16 redirect? Do you want a minute or two.

17 MR. KAMINSKI: Could we have a minute, please.

18 JUDGE CASEY: You can have two. We are off the  
19 record

20 (Short break taken.)

21

22

1 REDIRECT EXAMINATION

2 BY

3 MR. KAMINSKI:

4 Q. On redirect, Mr. Effron, referring to the  
5 assumption of unrealized gains for tax purposes,  
6 could you tell us how you reach the assumption of  
7 7.8 years for that time period?

8 A. Yes. That was based on the company's  
9 response to Attorney General information requests 38  
10 and 39 which I believe are found in the fifth set,  
11 and in that response the company provided the actual  
12 capital gains tax paid in the years 19 97, 1998, and  
13 1999 from the tax qualified funds and from the  
14 non-tax qualified funds.

15 I took the highest amount of taxes paid  
16 in each of those years and assumed that that would  
17 be the rate at which the taxes on the unrealized  
18 gains would be paid going forward.

19 Using that method, I calculated that it  
20 would take approximately 7.8 years to pay the taxes  
21 on the unrealized gains existing as of the end of  
22 1999, and this was something that an assumption was

1 necessary for because the longer the taxes are  
2 paid -- the longer the delay in paying the taxes, I  
3 should say, the lower the presented value will be of  
4 that tax liability.

5                   And I felt that the method I used was a  
6 reasonable conservative assumption, and I should  
7 point out, the -- if the three-year assumption were  
8 used, its correct the liability -- the present value  
9 of liability would be greater and it would have  
10 changed the -- that very immaterial excess that I  
11 calculated, into a deficiency, but it would still be  
12 something in the range of zero given the numbers we  
13 are talking about. And the effect is really no  
14 different than modifying any of the other  
15 assumptions.

16       MR. KAMINSKI: Thank you. No further questions.

17       MR. MCKENNA: Nothing further.

18       JUDGE HILLIARD: The witness is excused.

19                   (Whereupon, Edison Exhibit  
20                   Nos. 2, 6, and 8 were  
21                   marked for identification  
22                   as of this date.)

1 JUDGE CASEY: Mr. Rogers, you are ready?

2 MR. ROGERS: Yes, we are. The next witness is  
3 Mr. Robert Berdelle.

4 JUDGE CASEY: Mr. Berdelle, do you want to stand  
5 to be sworn.

6 (Witness sworn.)

7 JUDGE CASEY: Mr. Rogers, please proceed.

8 ROBERT BERDELLE,  
9 called as a witness herein, having been first duly  
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MR. ROGERS:

14 Q. Mr. Berdelle, would you state your name and  
15 spell your last name for the record.

16 A. It is Robert E. Berdelle, B-e-r-d-e-l-l-e.

17 Q. And by whom are you employed?

18 A. Commonwealth Edison Company.

19 Q. And what is your capacity at Commonwealth  
20 Edison?

21 A. Vice president and comptroller.

22 Q. Mr. Berdelle, I am showing you what have

1 been marked as Edison Exhibits 2, 6, and 8. Are  
2 these direct, supplemental direct, and rebuttal  
3 testimony that have you prepared for submission in  
4 this proceeding?

5 A. Yes, they are.

6 Q. And on ComEd Exhibit 2, there are, are there  
7 not, two Exhibits A and B that you have attached to  
8 your testimony?

9 A. Yes, there are.

10 Q. And also an Exhibit 1?

11 A. Correct.

12 Q. Are there any additions or corrections that  
13 you would like to make on -- as on  
14 Exhibits 2, 6, or 8?

15 A. No, there are not.

16 Q. I am also showing you what has been marked  
17 previously as ComEd Exhibit 14 which are responses  
18 to questions that your -- were presented to ComEd by  
19 the Hearing Examiners and that have been the subject  
20 of prior testimony by other witnesses who have  
21 sponsored certain of the answers.

22 Are there certain answers on ComEd

1 Exhibit 14 that you will be sponsoring as part of  
2 your testimony?

3 A. Yes, there are.

4 Q. And is there any part of the answer to  
5 Question \$1 that is part of your testimony?

6 A. Yeah. I will be sponsoring the last four  
7 sentences in the response to Question \$1.

8 Q. Are there any corrections in the last four  
9 sentences that you would like to make?

10 A. Yes, there is. There is one correction in  
11 the second sentence. The words "or IRS" should be  
12 stricken.

13 Q. And would you briefly explain the reason for  
14 that?

15 A. Sure. The nature of the response is that  
16 the NRC does not require that there be two separate  
17 trust funds maintained for the purposes of nuclear  
18 decommissioning. However, the IRS does, for  
19 purposes of maximizing the contributions to the tax  
20 qualified fund for the IRS, they do require that a  
21 tax qualified trust fund be segregated from a  
22 non-tax qualified trust fund. So, thus, the Genco



1 will have separate trusts for each unit that will be  
2 decommissioned, a tax qualified trust as well as a  
3 non-tax qualified trust.

4 Q. Thank you. Mr. Berdelle, are you also  
5 sponsoring the responses to Questions 3, 4, 5, and 6  
6 on ComEd Exhibit 14?

7 A. Yes.

8 Q. Are there any corrections in those responses  
9 that you wish to make?

10 A. No.

11 MR. ROGERS: All right. I would offer into  
12 evidence Edison Exhibits 2, 6, and 8 and also the  
13 portions of ComEd Exhibit 14, the responses to  
14 Questions 3, 4, 5, and 6 and the last four sentences  
15 to response to Question \$1 as corrected by Mr.  
16 Berdelle.

17 JUDGE CASEY: Any objections? Okay. ComEd  
18 Exhibits 2, 6, 8 and those responses to questions 1,  
19 3, 4, 5 and 6 in ComEd Exhibit 14 are admitted.

20

21

22

1 (Whereupon, ComEd Exhibit  
2 Nos. 2, 6, 8 and a portion  
3 of 14 were  
4 admitted into evidence.)

5 MR. ROGERS: No further questions. The witness  
6 is available for cross-examination.

7 JUDGE CASEY: Thank you very much,  
8 Mr. Rogers. Mr. Townsend, are you lead-off man.

9 MR. TOWNSEND: I defer to Staff, if they would  
10 like.

11 MR. REVETHIS: No. That is fine, you can go  
12 ahead, Mr. Townsend.

13 MR. TOWNSEND: Thank you.

14 CROSS-EXAMINATION

15 BY

16 MR. TOWNSEND:

17 Q. Good afternoon, Mr. Berdelle, Chris Townsend  
18 appearing on behalf of the Chicago Area Industrial  
19 and Healthcare Customer Coalition.

20 A. Good afternoon, Mr. Townsend.

21 Q. Edison has asserted decommissioning cost are  
22 \$5.6 billion in 2000 dollars; is that correct?

1       A.    The decommissioning cost estimates in 2000  
2 dollars are \$5.6 billion, that's correct, as  
3 calculated by Mr. LaGuardia.

4       Q.    Of that \$5.6 billion, \$2.5 billion is  
5 already in a decommissioning trust fund; is that  
6 right?

7       A.    That's correct as of the end of '99.

8       Q.    And that leaves \$3.1 billion to be made up  
9 somehow, right?

10      A.    3.1 based upon the estimate that 5.6 is a  
11 valid number.

12      Q.    And how much of that \$3.1 billion would be  
13 realized merely by the trust fund gaining interest?

14      A.    I don't know the answer to that.

15      Q.    Any idea of a ballpark?

16      A.    Not off the top of my head.

17      Q.    You claim that Edison's proposal would  
18 result in savings to customers of \$1 billion; is  
19 that right?

20      A.    That's correct.

21      Q.    If I can refer you to your supplemental  
22 rebuttal testimony at page 9.

1 A. That is Edison Exhibit 6?

2 Q. That's correct.

3 JUDGE HILLIARD: That is supplemental direct

4 testimony.

5 BY MR. TOWNSEND:

6 Q. I'm sorry. Supplemental direct testimony.

7 A. Page 9?

8 Q. Yes.

9 A. I'm there.

10 Q. And does that \$1 billion figure combine

11 adding together the amounts for 2007 through 2028?

12 A. I believe so.

13 Q. And that is the amount that the Genco would

14 be responsible for under Edison's proposal; is that

15 right?

16 A. That's correct.

17 Q. Do you recall being asked CUB Data Request

18 No. 11?

19 A. No.

20 Q. Can you obtain a copy of that response? Do

21 you have that?

22 A. I do have that.

1       Q.    And in that response you indicate on that  
2 schedule that ratepayers will be paying  
3 decommissioning charges for the years 1999 through  
4 2007 under Edison's proposal; is that right?

5       A.    No, that is not right.

6       Q.    Looking at the first page of your schedule,  
7 and -- I'm sorry.

8               The question asks on an annual basis  
9 until the last plant is decommissioned, please fully  
10 disclose the calculations for ComEd's  
11 decommissioning expenditures, trust fund  
12 requirements, and customer deposits into the trust  
13 funds in present values and nominal dollars; is that  
14 right?

15      A.    That's correct.

16      Q.    And this schedule that is attached to this  
17 response is supposed to be Edison's response to that  
18 question; is that correct?

19      A.    It is.

20      Q.    And in that response in the first page there  
21 is a column that is entitled, Contribution. Do you  
22 see that?

1       A.    That's correct.

2       Q.    And what is that supposed to represent?

3       A.    That represents the contributions of

4 trust -- of moneys into the trust funds made by the

5 Genco.

6       Q.    That is by the Genco?

7       A.    (Nodding head.)

8       Q.    In the year 2000, the Genco would be paying

9 \$122,000; is that your claim?

10      A.    Well, in the year 2000 it represents a ComEd

11 contribution, but in then in subsequent years, it

12 would be contributions made by the Genco.

13      Q.    And it would be contributions made by the

14 Genco from the charges that they would be

15 receiving -- I'm sorry -- as a result of the money

16 they would be receiving from Edison and the charges

17 that Edison would be imposing upon ratepayers; is

18 that correct?

19      A.    That's correct, and ratepayers would be

20 paying those charges through the end of 2006,

21 according to our calculations.

22      Q.    And there would be a true-up after 2006; is

1 that right?

2 A. No. The deposit is made into the trust  
3 post-2006.

4 Q. So that is why you have 2007?

5 A. Correct.

6 Q. Now, Edison has proposed \$120.9333 million  
7 to be paid by ratepayers each year for the years  
8 2000 through 2006; is that correct?

9 A. The proposal would be -- the amount is right  
10 and it would be effective whenever the Commission  
11 authorizes it to become effective through the end of  
12 2006. That's correct.

13 Q. Now, this schedule does not reflect that  
14 \$121 million contribution, does it?

15 That is to say, the contributions in the  
16 years are not \$120.933 million for the years 2001  
17 through 2006, are they?

18 A. They are included in there.

19 Q. Why are those charges or the contributions  
20 higher than the \$121 million?

21 A. Because there is an additional approximately  
22 \$11 million contribution that is made annually that

1 represents moneys that ComEd collected from  
2 ratepayers prior to the establishment of the  
3 external trust in 1989, and those moneys are being  
4 paid into the trust regularly over the remaining  
5 lives of the plants according to a previous  
6 Commission order.

7           However, it is a portion of the company's  
8 proposal in this proceeding to pay those moneys  
9 which represent roughly \$66 million into the trusts  
10 over a six-year period.

11       Q.   And so if you backed out those numbers, it  
12 would be the \$121 million per year?

13       A.   Roughly, correct.

14       Q.   And in this response it indicates that there  
15 will be no further contributions into the trust fund  
16 after 2007; is that correct?

17       A.   That is what is shown on this response,  
18 that's correct.

19       Q.   Thank you. I would like to talk about the  
20 revised deal that is proposed in your rebuttal  
21 testimony. When did Edison decide to revise its  
22 proposal?



1       A.    Could you recite a page number in my  
2   rebuttal?

3       Q.    I am talking generally about the concept of  
4   providing a revision to Edison's original proposal  
5   in this docket?

6       A.    Is that the --

7       Q.    You reference it in your response to the  
8   question that begins on line 16?

9       A.    Line 16 of what page?

10      Q.    Of -- I'm sorry.  Page 1.

11      A.    Oh.

12      Q.    And I think specifically at page 2 in that  
13   response, you discuss changes, I think, to Edison's  
14   proposal?

15      A.    What line on page 2?

16      Q.    At line 25 going on to page 3 at  
17   line 5?

18      A.    Okay.  I'm there.

19      Q.    Is this a revision to Edison's original  
20   proposal?

21      A.    I would not call it a revision.  I would  
22   call it a modification.

1 Q. Okay. When did Edison decide to modify its  
2 proposal?

3 A. Sometime prior to the filing of this  
4 rebuttal testimony. I can't tell you specifically  
5 when because I don't recall.

6 Q. When did Edison inform parties of its intent  
7 to modify its proposal?

8 A. Likely when we filed the rebuttal testimony.

9 Q. And parties had no opportunity to present  
10 testimony regarding Edison's modified proposal, did  
11 they?

12 A. I don't know the answer to that.

13 Q. You don't know the hearing schedule in this  
14 case?

15 A. I am here now.

16 Q. You don't know when parties filed testimony?

17 A. I really don't.

18 Q. Do you know whether or not Edison proposed  
19 to allow parties to present testimony regarding its  
20 modified proposal?

21 A. I don't know.

22 Q. Do you know if there is a statutory deadline

1 associated with this proceeding?

2 A. I don't believe there is.

3 Q. From a business perspective, Edison would  
4 like this proceeding to conclude as soon as  
5 responsible; is that correct?

6 A. That's correct.

7 Q. Did Edison perform any economic analysis of  
8 its proposed modification?

9 A. Any one in particular or all of the  
10 modifications?

11 Q. The entire modified proposal.

12 A. No, we did not calculate a new economic  
13 analysis based upon these modifications. These  
14 were, in our judgment, implied in our original  
15 proposal. They did not impact the economics of our  
16 overall petition in this proceeding.

17 Q. So Edison did not prepare any workpapers  
18 associated with any portion of this proposal?

19 A. Not that I am aware of.

20 Q. What details did Edison provide relating to  
21 the modifications to its proposal?

22 A. I believe it is contained in my rebuttal

1 testimony beginning on page 15 and then continuing  
2 on through page 16 on to page 17. It is a  
3 description of Edison's modifications.

4 Q. Now, you did not present any proposed  
5 contract language to be included in the power  
6 purchase agreement to represent these modifications,  
7 did you?

8 A. No, we did not. Although, these  
9 modifications likely would be codified, so to speak,  
10 in whatever agreement that the company ultimately  
11 makes at the conclusion of this proceeding.

12 Q. Agreement with whom?

13 A. Well, the agreement that I referred to was  
14 the agreement that it would assert that it would no  
15 longer -- if this proposal was approved by the  
16 Commission, the company would assert that it would  
17 not go back to ratepayers for additional funds, in  
18 the event of short falls to the decommissioning  
19 trusts and would no longer collect any  
20 decommissioning funds from ratepayers after the year  
21 2006.

22 Q. Who would that agreement be with?

1       A.    That would be the company's commitment that  
2   it would make at the conclusion of this proceeding,  
3   and that commitment would be included in -- and it  
4   is contemplated, at least by the company, that that  
5   commitment would be included in the Commission's  
6   order in this proceeding.

7       Q.    And you did not present any proposed  
8   language, specific language to address any of these  
9   proposed assurances, did you?

10      A.    Not at this point in time, no.

11      Q.    And you did not discuss any legal authority  
12   of the Commerce Commission to accept such written  
13   assurances?

14      A.    For these modifications?

15      Q.    Correct.

16      A.    I don't believe we have.

17      Q.    Let's talk about the first modification, a  
18   refund of surplus?

19      A.    Yes.

20      Q.    Would you agree that Edison's revised  
21   proposal contains less of an incentive than its  
22   original proposal did for the Genco to decommission

1 efficiently?

2 A. No.

3 Q. Under Edison's proposal, what oversight  
4 there will be to ensure that Genco acts efficiently  
5 when it is decommissioned?

6 A. I think the oversight will be in place by  
7 the Nuclear Regulatory Commission.

8 Q. And under the original proposal, Genco could  
9 keep the profits of any of the decommissioning costs  
10 -- strike that.

11 Under Edison's original proposal, Genco  
12 would receive the decommissioning trust fund as well  
13 as the additional \$730 million or so that are going  
14 to be paid out over the next couple of years; is  
15 that correct?

16 A. Could you repeat the question.

17 Q. Just trying to get a sense as to at the end  
18 of the day, under Edison's original proposal, is it  
19 true that Genco could keep any surplus that may  
20 exist in the decommissioning trust fund?

21 A. The original proposal made by the company  
22 never contemplated that there would be any surplus

1 in the decommissioning trust. Rather, the company's  
2 proposal was such that the trust would either be  
3 adequately funded or more likely the risk of  
4 underfunding exists and that Genco would have to  
5 supplement the contributions to the trust. But you  
6 are correct, to the extent that there did exist a  
7 surplus, then there was no refund provision  
8 contained in the unlikely event that there was an  
9 overfunded trust.

10 Q. So there was a financial incentive for Genco  
11 to try to minimize the amount that it spent out of  
12 the decommissioning trust fund within the parameters  
13 of what was required?

14 A. I don't think there is an additional  
15 financial incentive to Genco. There exists a strong  
16 financial incentive in the modified proposal for the  
17 Genco to efficiently decommission the plants.

18 Q. Because you don't believe that the  
19 decommissioning trust fund is going to be  
20 overfunded?

21 A. Correct.

22 Q. Now, if there were a technological fix that

1 Genco could discover in 2003, under the old proposal  
2 Genco had a financial reward that it would have  
3 received if it implemented that technological fix,  
4 correct?

5 A. No. I would say that the risk of being  
6 further underfunded would be somewhat mitigated.

7 Q. If decommissioning costs were cut in half as  
8 a result of the finding of a technological fix, what  
9 would have happened under Edison's original  
10 proposal?

11 A. I don't understand the question.

12 Q. In the year 2003 some type of technological  
13 advance is discovered.

14 A. I understand that. You said what would have  
15 happened.

16 Q. What would have happened to the  
17 decommissioning trust fund moneys at the end of the  
18 day?

19 A. They would remain in the decommissioning  
20 trust to satisfy the decommissioning of the 13  
21 plants.

22 Q. And we have assumed that the costs currently



1 are going to be 5.6?

2 A. That is the current costs. We don't know  
3 what the future costs will be.

4 Q. Exactly. And so assuming that there is --  
5 strike that.

6 Was this revision regarding refunding  
7 surpluses designed to respond to ratepayers'  
8 concerns that Edison had an incentive to overcollect  
9 decommissioning costs from ratepayers?

10 A. Could you repeat the question.

11 JUDGE CASEY: You didn't hear the question, you  
12 don't understand the question.

13 THE WITNESS: No, just repeat it. I was not  
14 following.

15 BY MR. TOWNSEND:

16 Q. Was this modification regarding refunding  
17 the surpluses designed to respond to ratepayers'  
18 concerns that Edison had an incentive to overcollect  
19 decommissioning costs from ratepayers?

20 A. The modified proposal was to address  
21 concerns that many parties raised in this proceeding  
22 that there would be some hypothetical windfall that

1 the Genco would receive. It has never been the  
2 company's intention in the original proposal that  
3 there would be any moneys left over. Rather, the  
4 proposal was an attempt to balance the risks  
5 associated with decommissioning between the Genco  
6 and ratepayers, so, yes, the modification was to  
7 address an issue that was raised in this proceeding.

8 Q. The modification No. 2 referenced at line 35  
9 on page 2 of your rebuttal testimony is that the  
10 funds in the decommissioning trust will be used for  
11 both radiological and, to the extent available,  
12 non-radiological decommissioning. Do you see that?

13 A. I see that.

14 Q. Is this assurance a change from Edison's  
15 original proposal?

16 A. No, not really. It is not a change from  
17 Edison's intent in its original proposal, but there  
18 were parties that raised an issue that Edison -- or  
19 the Genco somehow would use funds in the trust only  
20 to satisfy radiological decommissioning and then  
21 refund that money back to the Genco, and  
22 non-radiological decommissioning not be performed.

1 So this is a commitment -- a stated commitment that  
2 the company would require the Genco to use the funds  
3 in the trust for both radiological and  
4 non-radiological decommissioning.

5 Q. Is there a clear definition of what  
6 constitutes non-radiological decommissioning?

7 A. We have used the definition as contained in  
8 the Thomas LaGuardia studies.

9 Q. Would you agree that there has been much  
10 debate in the nuclear decommissioning community as  
11 to what non-radiological decommissioning means?

12 A. I don't know.

13 Q. Could it mean to restore the condition to --  
14 restore the asset to a condition where another power  
15 plant could be built on the site?

16 A. I believe so.

17 Q. Could it be interpreted to mean return the  
18 asset or the land to pristine condition?

19 A. I believe so.

20 Q. Would you agree that all else being equal,  
21 the more money that is spend on non-radiological  
22 decommissioning the higher the value of the asset

1 will be?

2 A. What asset?

3 Q. The plant, the land. The asset that is  
4 being decommissioned.

5 A. I would think that plant being  
6 decommissioned has no value. It has a negative  
7 value. I don't understand the question.

8 Q. Well, I guess perhaps you should explain  
9 what happens when you have non-radiological  
10 decommissioning. What occurs?

11 A. The plant is decommissioned, both  
12 radiologically and non-radiologically.

13 Q. What does that mean to have it  
14 non-radiologically decommissioned? Does that mean  
15 that buildings are taken down? Does that mean the  
16 buildings are cleared away? Does that mean that  
17 just the -- what happens when you have  
18 non-radiological decommissioning?

19 A. I am not the expert on non-radiological  
20 decommissioning. I am not testifying as to what  
21 happens on non-radiological decommissioning.

22 But my understanding in the LaGuardia

1 studies, some of the facilities are dismantled and  
2 the waste is hauled away and some of the facilities  
3 are left standing, those that could be reused.

4 Q. What guarantee will there be that the Genco  
5 will actually spend the decommissioning trust fund  
6 money on non-radiological decommissioning?

7 A. I think the company -- the company's  
8 proposal in this proceeding is that the -- ComEd  
9 would contract with the Genco, and the Genco would  
10 agree to spend the moneys on non-radiological  
11 decommissioning to the extent that those moneys  
12 exist in the trust.

13 Q. And you have not presented any such contract  
14 to the Commission, have you?

15 A. Not at this point, no.

16 Q. Is Edison planning to at some point in the  
17 future?

18 A. Absolutely, if the Commission approves this  
19 proceeding.

20 Q. Are parties going to have an opportunity to  
21 review that and comment upon it, provide expert  
22 testimony with regard to that contract?

1       A.    I don't know.

2       Q.    Don't you think that would be fair?

3       A.    I don't know.

4       Q.    Assuming that Edison enters into this

5 contract with Genco, what oversight will there be to

6 determine that the money is spent as alleged?

7       A.    Well, there is a contract that exists

8 between two parties, and I suppose that to the

9 extent that one party were to violate that contract,

10 then the provisions of the contract law would apply.

11      Q.    So we would have to rely on Edison to

12 enforce the contract?

13      A.    I don't know.

14      Q.    What oversight would there be to ensure that

15 the money is spent efficiently by the Genco under

16 such a hypothetical contract?

17      A.    I think there are sufficient incentives

18 built into this proposal to ensure that the Genco

19 will decommission the facilities efficiently.

20      Q.    So there will be no additional oversight?

21      A.    I don't believe so.

22      Q.    Okay.  New modification No. 3, line 39, a

1 condition of the collection of the \$120.933 million  
2 in decommissioning funds from customers in 2005 and  
3 2006 is dependent upon ComEd and Genco reaching an  
4 agreement on a market price. Do you see that?

5 A. I do.

6 Q. Would Edison have to purchase its full  
7 requirements from the Genco?

8 A. No. The contribution agreement provides  
9 that ComEd would purchase energy up to the full  
10 capacity of the nuclear plants.

11 Q. And that is true for 2005 and 2006, as well?

12 A. Correct.

13 Q. And the price would be dependent upon market  
14 prices rather than the cost of production, correct?

15 A. That is correct.

16 Q. Does Edison believe that the market price  
17 will be higher than the cost of production in 2005  
18 and 2006?

19 A. There certainly is a hope that the market  
20 price will be higher than the cost of production.  
21 Otherwise, these plants won't be around in 2005 and  
22 2006.

1 Q. Is there an anticipation, not just a hope?

2 A. There is a forecast that they will be.

3 Q. What assurance will customers have that the  
4 price will be reasonable?

5 A. What assurance will customers have?

6 Q. That's correct.

7 A. I think customers will have assurance that  
8 they will only be charged for a reasonable price  
9 because the Commission will have full authority to  
10 separate 2005 and 2006.

11 Q. We will talk about that.

12 Will Edison be able to merely purchase  
13 the power from the Genco and then resell that power  
14 in the wholesale market?

15 A. In 2005 and 2006?

16 Q. Yes.

17 A. It may be able to do that to the extent that  
18 its requirements are below the amount of energy  
19 purchased from the Genco. It certainly could do  
20 that. That would likely be a small percentage of  
21 the power that it would derive from the Genco,  
22 however.



1 Q. Did Edison consider extending the initial --  
2 strike that.

3 There are two portions to the contract,  
4 correct? There is an initial term and there is a  
5 period beyond the initial term under -- considered  
6 under the power purchase agreement, correct?

7 A. No. There is one term that goes to 2006.

8 Q. Could you define or do you know what the  
9 initial term is, as that term is defined within the  
10 power purchase agreement?

11 A. It is through 2006 as it relates to the  
12 nuclear plants.

13 MR. ROGERS: I might just interpose that  
14 Mr. McDonald testified on the power purchase  
15 agreement. Mr. Berdelle is not the witness on that  
16 topic.

17 BY MR. TOWNSEND:

18 Q. Are you familiar with the power purchase  
19 agreement?

20 A. Not nearly as familiar as Mr. McDonald is.

21 Q. Prior to 2005 and 2006, how is the price set  
22 underneath the power purchase agreement, if you

1 know?

2 A. The price is a fixed price.

3 Q. And what is that price intended to reflect?

4 A. I don't know.

5 Q. Did Edison consider using a fixed price for  
6 2005 and 2006?

7 A. Yes.

8 Q. Why was that option abandoned?

9 A. Because Edison felt that the Commission  
10 would not likely approve an agreement in the year  
11 2000 that set a market price of energy in the year  
12 2005 and 2006 when the rate freeze period had ended.

13 Thus, the company felt that the energy  
14 ComEd purchased from Genco in the years 2005 and  
15 2006 had to reflect market at that time.

16 Q. Was that reflected in any ICC action?

17 A. I don't understand.

18 Q. How did Edison come to feel that the ICC  
19 would not approve a power purchase agreement that  
20 provided a better deal for consumers?

21 A. Based on other proceedings the company has  
22 had at the ICC that set the price of power for

1 periods beyond 2004.

2 Q. What other proceedings?

3 A. Oh, we sold a little hydro plant that set  
4 the price of energy for a ten-year period. We sold  
5 Kincade and State Line, a couple of coal plants that  
6 set the price of energy through 2012, and in each  
7 case when we presented those cases before the  
8 Commission, the Commission expressed reservation in  
9 setting prices beyond a defined period of time.

10 Q. Would you agree that regardless of what  
11 happens in the instant proceeding, effective January  
12 1, 2005, Edison will experience a number of  
13 regulatory changes?

14 A. I think that is -- I would agree with that.

15 Q. That is the end of the mandatory transition  
16 period?

17 A. Correct.

18 Q. The Commission can at that point order  
19 Edison to reduce its bundled rates?

20 A. It could.

21 Q. After January 1, 2005, in proceedings to set  
22 rates, there will be limits upon the types of issues

1 that the Commission can consider; is that right?

2 MR. ROGERS: Is this a legal question? It is  
3 kind of open ended to talk about the whole Public  
4 Utilities Act.

5 MR. TOWNSEND: It he is aware.

6 THE WITNESS: What do you mean by limits?

7 BY MR. TOWNSEND:

8 Q. Are you familiar with Section 16-111 of the  
9 Public Utilities Act?

10 A. I am familiar with it, not as an attorney  
11 but just as an accountant.

12 Q. Do you know whether after January 1, 2005,  
13 in proceeding to set rates the Commission will be  
14 limited in its ability to consider the profitability  
15 of Edison's utilities?

16 A. I don't know the answer to that.

17 Q. Effective January 1, 2005, Edison can  
18 petition for reinstatement of its fuel adjustment  
19 clause, can't it?

20 A. I believe that is correct.

21 Q. If Edison's proposal in this proceeding is  
22 approved, would Edison file to reinstate its fuel

1 adjustment clause?

2 A. I have no idea.

3 Q. Well, if Edison is no longer in the  
4 generation business, what rationale would there be  
5 for Edison to continue to assume the risk associated  
6 with fluctuating generation costs?

7 A. Well, if you are presuming that the  
8 generation costs are going to be fluctuating, if the  
9 power that Edison purchases off the market or from  
10 the Genco are not fluctuating and they are  
11 established in the base tariffs, there is no need  
12 for a fuel adjustment clause.

13 Q. Wouldn't there still be a risk that power  
14 prices will fluctuate?

15 A. If ComEd signs a long-term power purchase  
16 agreement with some entity, then there would be no  
17 risks.

18 Q. Do you know whether or not Edison plans to  
19 enter into such a power purchase agreement?

20 A. I don't think the company has plans that far  
21 out at this point in time, related to the fuel  
22 adjustment clause and rate setting matters.

1 (Change of reporters.)

2 Q. The company hasn't thought about what it's  
3 going to do in 2005 and 2006 with regards to  
4 generation costs?

5 A. I think the company has thought through what  
6 it's going to do through 2006 as it relates to the  
7 generation costs associated with the contribution  
8 agreement.

9 There is a tremendous amount of  
10 uncertainty that exists in the marketplace between  
11 now and 2006.

12 ComEd does not know how many customers it  
13 will be serving next year let alone 2005 or 2006.

14 As more clarity becomes known in terms of  
15 the customer base that the company is serving then  
16 it can begin to plan on how to serve those customers  
17 in the most efficient fashion.

18 Q. Assuming the generation costs are  
19 fluctuating, would you anticipate that Edison would  
20 file to reinstate its fuel adjustment clause?

21 A. I would not anticipate that.

22 Q. Would you anticipate the opposite?

1       A.    No.  I just don't know at this point in  
2 time.

3       Q.    Condition No. 4, Line 44 of your rebuttal  
4 testimony, ComEd will make a binding commitment in  
5 the Commission's order -- or a binding commitment  
6 will be reflected, I guess, in the Commission's  
7 order that ComEd will be required to accept in  
8 writing that after receipt of the payments to be  
9 made under the proposal, ComEd will forever waive  
10 any right to obtain additional decommissioning  
11 recoveries from ratepayers regardless of the  
12 existence of shortfall in the funds available for  
13 decommissioning.

14                   Is that right?

15       A.    That's correct.

16       Q.    Is this assurance a change from Edison's  
17 original proposal?

18       A.    No.

19       Q.    It's not a modification?

20       A.    No.

21       Q.    This one was already there?

22       A.    Yes.

1 Q. Is there any additional solace that the  
2 Commission should find that Edison's willing to put  
3 this in writing?

4 A. I can't speak for the Commission.

5 Q. Under Edison's proposal what would happen if  
6 decommissioning costs were significantly greater  
7 than anticipated?

8 A. The Genco would be required to supplement  
9 the contributions to the trust so that  
10 decommissioning -- the higher decommissioning costs  
11 could be paid for.

12 Q. And what would happen if Genco is not  
13 adequately capitalized?

14 A. I believe the Genco will be adequately  
15 capitalized. We are proposing to very adequately  
16 capitalize the Genco with nearly 100 percent equity.

17 Q. And the question is what happens if  
18 decommissioning costs are significantly greater than  
19 anticipated and Genco doesn't have enough money?

20 What happens then?

21 A. Well, the current forecast for that Genco  
22 will have sufficient cash flow to provide for the



1 operating costs of the Genco and make supplemental  
2 contributions, if necessary.

3 Q. Your expert witnesses go on about how  
4 decommissioning costs are uncertain; we don't know  
5 what's going to happen in the future; they could go  
6 out of this world.

7 Let's assume their worst case scenario  
8 and decommissioning costs are significantly higher  
9 than anticipated, significantly higher than even  
10 what you currently anticipate to capitalize Genco.

11 What happens if Genco is not adequately  
12 capitalized?

13 A. So the hypothetical here is that  
14 decommissioning costs are substantially greater than  
15 what are currently being contemplated in this  
16 proceeding and that Genco is insufficiently -- has  
17 insufficient cash flow or capital to raise money in  
18 the capital markets to fund that insufficient  
19 decommissioning cost?

20 Q. That's it.

21 A. Maybe it would have to sell some of its  
22 assets at that point in time to raise money and pay

1 for decommissioning at that time.

2           Remember, Genco will have one of the  
3 largest generating fleets in the country. It's  
4 currently contemplated that it will have much more  
5 than the ComEd nuclear plants and so these assets,  
6 you know, assets other than nuclear plants have  
7 value in the marketplace.

8       Q.    What if that's not enough?

9           Let me step back. First of all, Genco  
10 currently is thought to have all of those assets,  
11 correct?

12       A.    Yeah.

13       Q.    There's no guarantee that Genco is going to  
14 continue to hold those assets, is there?

15       A.    I think Genco -- the mission of Genco is to  
16 be a large generator of electricity.

17       Q.    The current mission of Genco, it could be  
18 that in a couple of years, the future mission of  
19 Genco is that it's going to be one of the largest  
20 sellers to other people of all of its assets, right?

21       A.    I doubt it.

22       Q.    That could happen, couldn't it? There's no

1 regulatory body that would prohibit Gen co from  
2 selling nonnuclear assets, is there?

3 A. I don't believe so.

4 Q. So let's assume that Genco has sold off  
5 those assets.

6 A. Well, your hypothetical assumes that at some  
7 future point in time all of a sudden it is  
8 discovered that there is a large shortfall in  
9 decommissioning.

10 The reality of the situation is that  
11 there is annual regulatory filings with the NRC.

12 Those filings hone in on the adequacy of  
13 decommissioning funds to fully satisfy  
14 decommissioning liabilities, and the company,  
15 whether it's ComEd today or Genco in the future,  
16 will have to assert to the NRC that it has financial  
17 adequacy not only to continue to operate the plants  
18 safely but also to decommission the plants safely.

19 So there will be no voila events that  
20 will happen because to the extent that on an annual  
21 basis Genco is underfunding its then estimated  
22 decommissioning liability, it will have to

1 supplement contributions to the trust.

2 Q. Assuming that it has money to supplement  
3 contributions to the trust?

4 And I'm asking you to assume -- well,  
5 first of all, isn't that correct? It's assuming  
6 that Genco has money to supplement the trust,  
7 correct?

8 A. You can only put money in the trust if it  
9 has money to put in, that's correct.

10 Q. And there's no one that is preventing Genco  
11 from selling its assets currently and paying that  
12 out as a dividend to Exelon and Exelon paying this  
13 out as a dividend to shareholders, is there?

14 A. I don't believe so.

15 Q. So, again, going back to the situation where  
16 sometime in the future it is determined that  
17 decommissioning costs are significantly greater than  
18 anticipated and it's discovered that Genco is not  
19 adequately capitalized, what happens?

20 A. I just don't think that hypothetical could  
21 occur, because on an annual basis the Genco will  
22 have to supplement the trust if those trusts are

1 deemed to be insufficiently funded. That's the  
2 purpose --

3 Q. That's under current NRC regulations,  
4 correct?

5 A. That's the purpose of having segregated  
6 trusts so that Genco is required to ensure that  
7 these trusts are adequately funded to pay for the  
8 safety -- safe decommissioning of these plants.

9 Q. That's under current NRC regulations that  
10 you're unable to accept that hypothetical, correct?

11 A. It's based upon the NRC regulations that  
12 have existed since 1986.

13 Q. And those regulations can change, can't  
14 they?

15 A. I can't speak to the NRC regulations whether  
16 they change or not. I doubt that they will.

17 Q. Again, you present testimony from other  
18 folks that suggest that NRC regulations, and you  
19 can't predict what's going to happen at the NRC with  
20 regards to extending life of plants.

21 Are you saying that now we should just  
22 accept this regulation isn't going to change but

1 other things may or may not change?

2 A. I find it hard to believe that the NRC would  
3 loosen its regulations as it relates to providing  
4 sufficient funds to safely decommission these  
5 plants.

6 If anything, I would think -- if the  
7 regulations would change, it would only tighten up,  
8 it would not be looser.

9 Q. So you're asking the Illinois Commerce  
10 Commission to trust the NRC -- that Genco would be  
11 adequately capitalized?

12 A. I'm not asking the ICC to trust the NRC.  
13 We're asking the ICC to approve our petition as  
14 requested and the NRC is given the authority by the  
15 federal government to safely manage or safely  
16 provide -- provide safe oversight to the operation  
17 and decommissioning of all the nuclear plants in the  
18 country.

19 Q. Do you know what the Commission's historic  
20 policy has been with regards to level of NRC funding  
21 as opposed to the level of funding required by the  
22 Illinois Commerce Commission?

1       A.    I'm somewhat familiar with it.

2       Q.    Would it be accurate to say that the  
3 Illinois Commerce Commission has required more  
4 funding than the NRC historically has required?

5       A.    Generally, yes.

6               Well --

7       Q.    Genco's ability to invest decommissioning  
8 trust funds will be subject to less oversight than  
9 Edison's ability to invest those funds presently;  
10 isn't that correct?

11      A.    The company -- the company, I would believe,  
12 would provide the same level of oversight; but  
13 you're right, the ICC would no longer have oversight  
14 over the asset classifications that are invested in.

15      Q.    Would the Genco be able to make higher risk  
16 investments?

17      A.    I think the Genco would evaluate the risk  
18 versus return relationship and if the investment  
19 class were deemed to have a greater risk adjusted  
20 return then it would invest, likely invest, in that  
21 asset class.

22      Q.    So it can make higher risk investments than

1 Edison?

2 A. Yes.

3 Q. Direct testimony, Page 5, Lines 18 to 19.

4 Tell me when you're there.

5 JUDGE CASEY: Page and line again?

6 MR. TOWNSEND: Page 5, Lines 18 to 19.

7 JUDGE CASEY: Thank you.

8 THE WITNESS: Those are blank spaces.

9 MR. TOWNSEND: In your direct testimony?

10 THE WITNESS: I got supplemental direct. Sorry.

11 Okay, I'm there.

12 MR. TOWNSEND: They may be blank so on.

13 BY MR. TOWNSEND:

14 Q. Is this a legal conclusion or is this just

15 Edison's desired result?

16 A. I think it's both.

17 Q. Is it being presented as a legal conclusion?

18 A. That is my understanding of the law, yes.

19 I'm not sure it's my conclusion but it's my -- my

20 interpretation of what the law says.

21 Q. You're not a lawyer?

22 A. That is correct.



1 Q. Page 6. The 120.933 million -- I'm sorry,  
2 \$120.933 million figure, that was just a figure that  
3 was proposed by Edison, correct?

4 A. Yeah, that was a figure that was a figure  
5 that was developed in the '99 Rider 31 proceeding  
6 that had general agreement by the Commission staff  
7 and the company as the appropriate cost of service  
8 for decommissioning.

9 Q. And it used to have the support of  
10 Commission staff; it no longer does, right?

11 A. I said general support. There's one minor  
12 issue that there's been a disagreement with the  
13 Commission staff.

14 Q. And staff's objections to that number have  
15 grown in this proceeding as compared to where they  
16 were in that proceeding?

17 A. No. The staff has the same position as it  
18 had in the prior proceeding. The result of their  
19 position, though, results in an increase in the cost  
20 of service, so that's why we say we're in general  
21 agreement with this number.

22 Q. That number was contested by a number of

1 parties within the '99 case, wasn't it?

2 A. I believe so.

3 Q. And there's not even been a Hearing  
4 Examiner's Proposed Order in that case?

5 A. That's correct.

6 Q. And that number would result in  
7 approximately a 45 percent increase over the current  
8 decommissioning rates, correct?

9 A. That's correct, but it only results in less  
10 than a 1 percent increase in overall customers'  
11 bills. In fact, residential customers would --

12 MR. TOWNSEND: I'm sorry, Mr. Berdelle, I'm going  
13 to have to interrupt you at this point.

14 I'm kind of limited in terms of the  
15 amount of time that I have to ask questions, so if  
16 you could just answer the questions that I ask, I'd  
17 really appreciate that.

18 MR. ROGERS: I think the question was in terms of  
19 a percentage. He was pointing out percentage of  
20 what. Otherwise it's misleading. It's not a 45  
21 percent increase in the bill.

22 MR. TOWNSEND: I didn't ask if it was a --

1 JUDGE CASEY: Counsel, Mr. Townsend, if you have  
2 an objection to the witness' response, make the  
3 objection.

4 MR. TOWNSEND: Okay. I object to everything  
5 beyond the initial response to my question.

6 JUDGE CASEY: I'm not going to rule on that just  
7 yet.

8 Mr. Berdelle, if he asks you a question,  
9 try to limit your answer just to the question asked,  
10 okay.

11 Now, what was the question that was  
12 asked?

13 BY MR. TOWNSEND:

14 Q. Would Edison's proposal result in a  
15 45 increase -- 45 percent increase over the current  
16 decommissioning rates?

17 JUDGE CASEY: Okay.

18 THE WITNESS: Subject to check, I think that's  
19 true.

20 BY MR. TOWNSEND:

21 Q. Did you perform any analysis regarding the  
22 impact that Edison's proposal would have upon the

1 annual rates paid by typical ratepayers in various  
2 customer classes?

3 A. Yes, we did, and that's why my response is  
4 that for all customers --

5 MR. TOWNSEND: Again, Mr. Berdelle, I'm sorry, I  
6 have to object.

7 JUDGE HILLIARD: It's a yes or no question, sir.

8 THE WITNESS: Yes, we did.

9 BY MR. TOWNSEND:

10 Q. Okay. Did you produce any such analysis  
11 when asked for your work papers?

12 A. We did the calculation yesterday.

13 Q. That was the first time that it occurred to  
14 you to do that calculation?

15 A. I think the answer is yes.

16 Q. Did you see the testimony of Mr. Bodmer in  
17 which he explained the impacts upon various types of  
18 customers?

19 He presented that in his direct  
20 testimony. Had you seen that?

21 A. We had seen that, but that, you know, had no  
22 relevance to us because it was just a dollar amount

1 that, you know, the \$250,000 increase to a customer  
2 likely is a customer that pays \$25 million a year;  
3 so I mean the relevance is that it's likely a  
4 percent or less increase for that customer and then  
5 after six years that customer pays nothing, so in  
6 our view, this is beneficial to customers in the  
7 long run.

8 Q. So a quarter million dollars just might be  
9 sitting around at that company that they can throw  
10 on to pay your decommissioning costs?

11 I'll withdraw the question?

12 A. For a typical --

13 JUDGE CASEY: He withdrew the question.

14 THE WITNESS: Sorry.

15 JUDGE CASEY: You don't have to answer it.

16 BY MR. TOWNSEND:

17 Q. You didn't present any testimony with  
18 regards to the impact that your proposal would have  
19 on the rates that typical ratepayers in various  
20 classes would experience?

21 A. Not written testimony, by, I just testified,  
22 what the impact would be on large customers referred

1 to by Mr. Bodmer.

2 Q. Does Edison have any plans to securitize the  
3 revenue stream associated with the decommissioning  
4 charges?

5 A. No.

6 Q. Will the Genco be precluded from building  
7 decommissioning costs into the market rates that it  
8 charges?

9 A. We believe -- yes. I mean, the market price  
10 for energy is based upon market forces, supply and  
11 demand, so it's not a bottoms-up calculation as a  
12 regulatory revenue calculation is, so it's unlikely  
13 that the market price of energy will include any  
14 recovery of decommissioning costs.

15 MR. TOWNSEND: Off the record for just a minute.

16 JUDGE CASEY: We're off the record.

17 (Whereupon, a discussion  
18 was had off the record.)

19 JUDGE CASEY: Back on the record.

20 BY MR. TOWNSEND:

21 Q. I'd like to direct your attention to the  
22 contribution agreement which is an attachment to

1 your direct testimony.

2 Genco is going to be a Pennsylvania  
3 corporation; is that correct?

4 A. I believe that's correct, but I'm not  
5 certain.

6 Q. Will it be headquartered in Pennsylvania?

7 A. Yes.

8 Q. Why is that?

9 A. I don't know. That was part of the merger  
10 agreement that the corporate headquarters would be  
11 in Chicago and the Genco headquarters would be in  
12 Pennsylvania.

13 Q. How was the contribution agreement  
14 negotiated?

15 A. I don't know the answer to that question.

16 Q. How did it come into being?

17 A. I don't know the answer to that question.

18 Q. You don't know why this says what it says?

19 A. I wasn't a party in the development or a  
20 person who was involved in the development of this  
21 agreement except as it relates to decommissioning.

22 Q. Do you know whether Edison will remain

1   liable for any environmental liabilities?

2       A.    As it relates to the nuclear plants, I don't  
3   believe it will, but I don't know specifically.

4       Q.    Draw your attention to Page 9 of the  
5   attachment, paragraph 2.3A, and in there it states  
6   that subject to and except for transferor's  
7   obligations pursuant to Section 2.4D excluded  
8   liabilities; is that right?

9       A.    You just referred to a section of the  
10   contribution agreement?

11      Q.    Yeah.

12      A.    You're asking me if your reference is  
13   correct?

14      Q.    That's correct.

15      A.    Yes.

16      Q.    You don't know what those excluded  
17   liabilities are?

18      A.    No, I don't.

19      Q.    You don't know why Edison will remain li able  
20   for those items?

21      A.    No, I don't.

22      Q.    You don't know what financial impact that



1 will have on Edison?

2 A. No, I do not.

3 Q. Turning your attention to Pages 19 and 20 of  
4 the agreement.

5 Edison is only obligated under the terms  
6 of this agreement to pay decommissioning costs in  
7 the amounts as shall be approved by the Illinois  
8 Commerce Commission; is that correct?

9 A. I believe that's correct, yes.

10 Q. So under this provision Genco is not  
11 necessarily -- I'm sorry.

12 So the Commission -- strike that.

13 If the Commission provides for \$121  
14 million for six years, that will be Edison's  
15 contractual obligation?

16 A. Correct.

17 Q. And if the --

18 A. Plus the 11 million per year for six years.

19 Q. And if the Commission provides for less,  
20 Edison's contractual obligation will be for less?

21 A. If Edison were to transfer its plants in  
22 accordance with this agreement.

1 Q. And if the Commission approves no additional  
2 collections, then Edison will not have a contractual  
3 obligation; is that correct?

4 A. If it had transferred the plants under this  
5 agreement, that's correct.

6 Q. What ongoing obligations does Edison have  
7 under the agreement?

8 A. As --

9 MR. ROGERS: That's a pretty open-ended question.

10 MR. TOWNSEND: It's meant to be.

11 BY MR. TOWNSEND:

12 Q. Once you sell the plants, what else does  
13 Edison have to do?

14 A. Buy power, maybe.

15 Q. Underneath this agreement or is that under  
16 the power purchase agreement?

17 A. That's under the power purchase agreement.  
18 I'm sorry.

19 JUDGE CASEY: I guess that's the problem with  
20 open-ended questions, Mr. Townsend.

21 BY MR. TOWNSEND:

22 Q. I'm trying to figure out if there are any

1 ongoing obligations.

2                   Perhaps that, are there any ongoing  
3 obligations that Edison has under the agreement?

4       A.    I believe there are, and I'm not an expert  
5 on this, but I believe there's certain obligations  
6 that Edison would have as it relates to maintenance  
7 of substation facilities or something like that that  
8 Genco is selling the power onto the electric grid  
9 and Edison for the six-year period would be buying  
10 that energy from the nuclear plants , so Edison has  
11 an obligation to maintain the transmission,  
12 distribution system in a certain fashion.

13       Q.    Do you know if that's actually in the  
14 agreement?

15       A.    I'm not sure it's in this agreement or there  
16 may be a facilities agreement that would cover that  
17 situation.

18       Q.    Under what circumstances may the agreement  
19 be terminated?

20       A.    There's a termination provision on  
21 Page 20, can be terminated by mutual consent of  
22 either party, terminated by court order or pursuant

1 to Section 7.1.

2 Q. Which recites those two things --

3 A. Right.

4 Q. -- correct?

5 So by mutual consent or court order,  
6 correct?

7 A. That's what it says here, yes.

8 Q. So once Edison has collected all of the  
9 decommissioning funds, it could give those funds to  
10 Genco and Genco and Edison could then agree to  
11 terminate this agreement; is that correct?

12 A. Well, Edison would not be collecting the  
13 decommissioning funds fully until the end of the  
14 year 2006, and this agreement ends at the end of the  
15 year 2006 so those periods match up rather nicely.

16 Q. So underneath this agreement, there's no  
17 obligation that Genco will be responsible for  
18 decommissioning the plants?

19 A. I'm sorry?

20 Q. I thought that that's where the obligation  
21 for Genco for decommissioning came from was from  
22 this contributions agreement.

1       A.    I believe that's correct.

2       Q.    So the agreement is going to end in 2006?

3       A.    I'm sorry --

4       Q.    What's --

5       A.    -- I'm thinking of the power purchase  
6 agreement again. I apologize.

7       Q.    So underneath the contributions agreement,  
8 which is the one that obligates Genco to do the  
9 decommissioning, Edison can collect the  
10 decommissioning funds, transfer them to Genco, and  
11 then Genco and Edison could agree to terminate the  
12 contract?

13      A.    I don't believe that's correct.

14               Once the plants are transferred, Genco  
15 would then have the liability to decommission the  
16 plants and it can't go back. It would remain with  
17 Genco.

18      Q.    Underneath the terms of this contract?

19      A.    Underneath the terms of ComEd's proposal,  
20 yes.

21      Q.    Which part?

22      A.    It's all included in ComEd's proposal. I

1 don't -- can't recite the specific language that I'm  
2 referring to, but it's all encompassed in ComEd's  
3 proposal in this proceeding.

4 Q. But you can't point to where it is that that  
5 obligation would continue if the contribution  
6 agreement was terminated?

7 A. No, I can't. As I'm sitting here today, I  
8 cannot.

9 Q. Underneath the terms of the contributions  
10 agreement, maybe I can direct your attention to  
11 Section 9.1 on Page 22, Edison and Genco can agree  
12 to amend this agreement at any time; isn't that  
13 correct?

14 A. That's correct.

15 Q. And looking at Section 9.9, what rights do  
16 ratepayers have under the terms of this agreement?

17 A. I don't understand the question. What  
18 rights do ratepayers have?

19 Q. Can ratepayers try to enforce this  
20 agreement?

21 MR. ROGERS: I think that's a legal question.

22 JUDGE HILLIARD: It's an objection and I'll

1 sustain it.

2 BY MR. TOWNSEND:

3 Q. Is it Edison's intention for ratepayers to  
4 be able to enforce the obligation against the Genco  
5 that it decommission the plants?

6 A. Is it Edison's intention that ratepayers  
7 would enforce the obligation? No. That's not  
8 Edison's intention.

9 Q. Is it Edison's intention that the Commission  
10 be able to enforce Genco's obligation to  
11 decommission the plants?

12 A. No. That's not Edison's intention.

13 Q. Is it Edison's intention underneath the  
14 terms of this agreement to give any rights or  
15 remedies to either ratepayers or the Commission?

16 A. To enforce its agreement?

17 Q. To give any rights or remedies. Any.

18 MR. ROGERS: I think the existence of rights and  
19 remedies again is a legal question, so I would  
20 object to him answering.

21 If he knows something about it as a  
22 layperson, he could --

1 MR. TOWNSEND: I'm asking about Edison's  
2 intentions.

3 JUDGE HILLIARD: You can answer the question, if  
4 you know the answer.

5 THE WITNESS: I don't know the answer.

6 BY MR. TOWNSEND:

7 Q. Supplemental direct testimony, Page 11. Let  
8 me know when you're there.

9 A. I'm there.

10 Q. There you state that as a practical matter  
11 no transfer of the nuclear stations can be made to  
12 the Genco without adequate provision for funding of  
13 decommissioning costs.

14 This would include the transfer of the  
15 assets now held in decommissioning trust funds and  
16 approval of the collection of \$123.933 million per  
17 year for six years as proposed in the petition.

18 Do you see that?

19 A. You said 123.933 million. It says 120.933  
20 million, but otherwise you read it correctly.

21 Q. What do you mean as a practical matter?

22 A. Well, what I mean there is that it would be



1 unlikely that this transfer would take place unless  
2 the company were able to get some certainty as it  
3 relates to the resolution of decommissioning funding  
4 and how much would be collected from ratepayers and  
5 set aside in decommissioning trusts.

6 Q. So there just needs to be some certainty;  
7 you're not saying that Edison has to receive  
8 everything that it's asked for in order for the  
9 transfer to go forward?

10 A. Our proposal is that it does receive  
11 everything it asks for.

12 Q. The question is if Edison does not receive  
13 100 percent of what it is asking for in this  
14 proceeding, will it still transfer the stations to  
15 Genco?

16 A. I would say I can't speak for what Edison  
17 would do. That's a decision that would be made by  
18 the chief executive officers and the board.

19 I can speak in terms of what I would  
20 advise the CEO to do. And my advice is that the  
21 collection of 120.933 million skews tremendous risk  
22 to the Genco and it should not accept anything less

1    than that amount.

2       Q.    So if only \$120 million for six years were  
3    approved within the context of this proceeding, you  
4    would recommend that the whole deal is off; that the  
5    nukes should not be transferred to Genco?

6       A.    As I said, I would recommend that the full  
7    amount be received.

8                It's unlikely in my mind that the  
9    Commission would authorize 120 million and just  
10   shave off 933,000.

11      Q.    Well, what if the number was 100 million for  
12   six years?

13      A.    I would recommend the company not transfer  
14   the plants.

15      Q.    So when you say as a practical matter,  
16   you're just talking about what your recommendation  
17   would be; not necessarily what Edison's ultimate  
18   conclusion would be?

19      A.    Well, you know, I'm speaking for Edison, but  
20   you asked me a hypothetical in terms of whether the  
21   plants would be transferred if it received something  
22   less than the 120.933 million.

1 Q. You don't know what Edison would do if it  
2 received less than 120 --  
3 A. That's correct.  
4 Q. --.933?  
5 A. That's correct.  
6 Q. Page 13, Line 40 through 46.  
7 MR. ROGERS: Same document?  
8 MR. TOWNSEND: Same document.  
9 BY MR. TOWNSEND:  
10 Q. Genco does not exist yet, does it?  
11 A. No, it does not.  
12 Q. So when you say that Genco will accept the  
13 risk of shortfall in decommissioning amounts because  
14 it believes that the stations can be operated  
15 profitably even in light of the risk, who are you  
16 talking about?  
17 A. I'm talking about the individuals that will  
18 be working in the Genco once the Genco is created  
19 and what those individuals believe in terms of  
20 profitability of the Genco.  
21 Q. And you spoke with those people in order to  
22 come up with this statement?

1       A.    Yes.

2       Q.    And how do those folks define the term  
3   profitably or what did you mean by the term  
4   profitably when you used it in that sentence?

5       A.    I would say profitably in that sense means  
6   that it's earning a reasonable rate of return for  
7   its -- for the company and that its cash flows are  
8   sufficient to operate the plants safely.

9       Q.    What rate of return?

10      A.    What rate of return will it achieve?

11      Q.    You said a reasonable rate of return.  
12   Specifically what rate of return?

13      A.    For which year?

14      Q.    If it varies, let me know.

15      A.    I would say the rate of return -- see, the  
16   Genco will have plants from the PECO organization  
17   and it will have plants and power purchase  
18   agreements from ComEd.

19                So the whole Genco likely will have a  
20   higher rate of return than the portion of the Genco  
21   that is being formed by the addition of the ComEd  
22   plants.

1                   So I believe the overall Genco, the pro  
2 formas I have seen, will operate at roughly a 15 to  
3 20 percent rate of return whereas the contribution  
4 of the ComEd plants and power purchase agreements  
5 will contribute roughly a 12 percent rate of return  
6 to the Genco.

7       Q.   Do you know what level of debt is assumed  
8 within that -- I'll withdraw the question.

9                   Did you develop any work papers from  
10 talking with the people who were going to be running  
11 Genco?

12      A.   I have not developed work papers but I  
13 believe there were work papers that were developed.

14      Q.   You don't have any notes to substantiate  
15 this claim that you make in that first sentence we  
16 just referred to, do you?

17      A.   I don't have any notes. I have seen some  
18 results of some studies that reflects the  
19 profitability of Genco.

20      Q.   Turning to Page 14, see --

21      JUDGE CASEY: If you can try to speak in the  
22 microphone or at least get a little bit closer to

1 it.

2 THE WITNESS: Sorry, I will do that.

3 JUDGE CASEY: That's okay. Page 14?

4 MR. TOWNSEND: Page 14.

5 BY MR. TOWNSEND:

6 Q. What additional flexibility would Genco have  
7 to invest the decommissioning trust fund?

8 A. Well, the flexibility that I was referring  
9 to is the level of equity investments that currently  
10 is a limitation on these trusts for ComEd.

11 ComEd is limited currently to 65 percent  
12 equities in the trust. And prior to a petition last  
13 year, ComEd was limited to 60 percent equity  
14 investments in the trust.

15 And at that time the company -- the  
16 trusts, I should say, were bumping up against the  
17 maximum percentage allocations to equities just  
18 because of appreciation that had existed in the  
19 market on the equity -- the fair value of the  
20 equities.

21 So the company petitioned to raise the  
22 cap to 65 percent last year and was able to get

1 approval on that, although that still is a lack of  
2 flexibility, or better put, better said, the Genco  
3 will have added flexibility because that limitation  
4 would not exist.

5 Q. So you anticipate that Genco might invest in  
6 a level of equity above the 65 percent?

7 A. The Genco would invest in whatever asset  
8 classes it deems to be appropriate on a risk  
9 adjusted basis.

10 There may be times in the marketplace  
11 where the Genco believes that a greater allocation  
12 than 65 percent equities is appropriate.

13 It may believe that less than 65 percent  
14 may be appropriate and it all depends upon market  
15 conditions that exist at the various times that it's  
16 making its investments.

17 Q. If Genco were to receive a higher return on  
18 its investment, doesn't that mean that Genco is  
19 making riskier investments?

20 A. Not necessarily. Could mean it's making  
21 less risky investments.

22 Q. What investment strategy will provide a

1 higher return with less risk?

2 A. Well --

3 Q. Tell me, because I --

4 A. Let's take a scenario where 100 percent of  
5 the assets are invested in corporate bonds.

6 One could suggest that a more diversified  
7 portfolio that might have 50 percent equities and 50  
8 percent bonds might actually be a less risky  
9 diversified portfolio.

10 Now, that 50 percent equities generally  
11 would generate higher returns than an asset class  
12 that's totally devoted to corporate bonds; so in  
13 that case, higher return and less risk could be  
14 achieved.

15 Q. But those aren't the types of constraints  
16 that are facing decommissioning trust fund. They  
17 aren't currently in 100 percent corporate bonds, are  
18 they?

19 A. No. They're not 100 percent in corporate  
20 bonds, but there are limitations in terms of what  
21 can be invested. In other words --

22 Q. In your example, though, you're suggesting



1 that there should be diversification between stocks  
2 and bonds, right?

3 A. That's correct.

4 Q. And there currently can be diversification  
5 between stocks and bonds; is that correct?

6 A. Right, there's other limitations on, you  
7 know, the credit quality of the types of corporate  
8 bonds that could be invested in.

9 There's limitations on how much  
10 investments can be made internationally. There's  
11 all sorts of limitations in regards to this.

12 Q. Those limitations limit the risk of the  
13 investment for the trust fund?

14 A. That's not true. That's not true. Most  
15 expert investment advisors would suggest to you that  
16 an opportunity to invest overseas will actually  
17 lessen the risk of an investment portfolio because  
18 the international equities return -- generate  
19 returns conversely to the U.S. marketplace.

20 So a more diversified portfolio in  
21 certain cases that have a higher asset allocation to  
22 international equities could actually lessen the

1 risk of a portfolio.

2 Q. Absent this proposal in the instant  
3 proceeding, would Edison petition to obtain this  
4 additional flexibility to benefit ratepayers?

5 A. Probably not.

6 Q. Rebuttal testimony, Page 2, Line 12. Please  
7 define the term suboptimal.

8 JUDGE HILLIARD: What line?

9 MR. TOWNSEND: Line 12 -- I'm sorry, 13.

10 THE WITNESS: No, it's Line 12.

11 Suboptimal would be a level of  
12 performance that would be less than optimal.

13 BY MR. TOWNSEND:

14 Q. Can you describe how you would anticipate  
15 Edison's rates would be affected if plant  
16 performance were optimal and Edison's petition in  
17 this proceeding were denied?

18 A. Rates? Rates are frozen through 2004.

19 I'm sorry, I don't understand the  
20 question. Could you add clarity to the question?

21 Q. Rates are only frozen through 2004. I'm  
22 talking beyond 2004.

1       A.    Okay.  Beyond 2004, if the nuclear plants  
2   were not transferred to the Genco and the plants  
3   operated suboptimally?

4       Q.    I'm sorry, operated optimally was the --

5       A.    Optimally?  And the question s what would  
6   happen to rates?

7       Q.    That's right.

8       A.    I don't know.  I mean that requires me to  
9   assume many things that will exist in the year 2005  
10  such as how many customers ComEd is serving, what  
11  inflation, general inflation exists between now and  
12  then, many other factors besides the performance of  
13  nuclear stations.

14      Q.    Do you have Edison's response to CUB Data  
15  Request No. 11?  I think we talked about that  
16  earlier.

17                   While they're looking for that, I -- in  
18  your testimony on Page 3 of your rebuttal testimony  
19  is it your understanding that this is the document  
20  upon which intervenors relied to determine the 7.36  
21  percent?

22      A.    Which document are you referring to now?

1 Q. In your rebuttal testimony --

2 A. Right.

3 Q. -- in your answer that's Lines 14 through

4 24.

5 A. Right.

6 Q. Is it your understanding that intervenors

7 relied upon Edison's response to CUB Data Request

8 No. 11 for that response?

9 A. I don't believe so.

10 Let me reread the question and answer

11 to -- on Page 3 of my rebuttal testimony, okay.

12 I don't know what intervenors relied upon

13 in generating this response.

14 Q. You don't know what intervenors may have

15 relied upon to come up with the 7.36 percent?

16 A. The 7.36 percent was a number that was

17 included in an attachment to my direct testimony so

18 I don't think it was they necessarily had to rely on

19 a data request response by the company.

20 Q. But Data Request Response No. 11 then asks

21 about that attachment to your testimony?

22 A. Okay. That's fair.

1 Q. That is how you derived the 7.36 or this --

2 A. No.

3 Q. This data request response responds to that  
4 7.36 percent; is that fair?

5 A. No. The 7.36 percent is the company's  
6 long-term estimate of the trust fund investment  
7 returns that will exist in both the tax qualified  
8 and the nontax qualified trusts. That's an  
9 after-tax figure.

10 Q. Which intervenors are you saying used the  
11 7.36 percent?

12 A. I believe every intervenor used the 7.36  
13 percent, as far as I know.

14 Q. Did you perform any calculations to  
15 determine whether or not Coalition Witness Bodmer  
16 relied on the 7.36 percent?

17 A. I don't recall.

18 Q. Well, did you produce any work papers that  
19 would suggest that you went back and tried to check  
20 that information?

21 A. We did not produce any work papers to verify  
22 what Mr. Bodmer used in his analysis.

1                   My response "I don't recall" is I don't  
2 recall what investment return Mr. Bodmer used in his  
3 analysis.

4       Q.    How has the trust fund performed in recent  
5 years?

6       A.    The trust fund has performed well in recent  
7 years which is reflective of the overall performance  
8 of the stock market that has performed well in  
9 recent years.

10      Q.    Would you be willing to accept subject to  
11 check that as of December 31, 1999, the total trust  
12 had a return for one-year period of 10.3 percent?

13      A.    On an after-tax basis or pretax?

14      Q.    Well, why don't you tell me.

15                   If you turn to your response to CUB Data  
16 Request No. 22, the second page?

17      A.    I'll accept it subject to check.

18      JUDGE CASEY:  What are we accepting subject to  
19 check, pretax or after tax?

20      THE WITNESS:  Okay.  It is pretax.  And pretax,  
21 it says at the heading of that column, before tax  
22 and before fees.

1 BY MR. TOWNSEND:

2 Q. Before tax for the three-year period it has  
3 a return of 16.9 percent?

4 A. That's correct.

5 Q. For five years, 17.3 percent?

6 A. That's correct.

7 Q. And since inception in September of '89,  
8 12.5 percent?

9 A. That's correct.

10 Q. And you criticize intervenors for using 7.36  
11 percent?

12 A. No. The 7.36 percent is our after-tax -- is  
13 ComEd's estimate of the after-tax and after-fee  
14 performance of these trusts over the next 20 to 30  
15 years over the --

16 Q. That's Edison's number?

17 A. That is Edison's number that's been in place  
18 since 1994 and has not -- has been approved by the  
19 Commission each year since 1994.

20 Actually it's increased. When the  
21 commission allowed a higher percent of equity in  
22 the -- in the trust last year. It used to be less

1    than that.

2       Q.    Page 15, Lines 5 to 10, you criticized Mr.

3    Stephens --

4       JUDGE CASEY:   Let him get there.

5    BY MR. TOWNSEND:

6       Q.    -- Mr. Stephens there?

7       A.    In the rebuttal?

8       Q.    Rebuttal.

9       A.    Page 15?  Yes.

10      Q.    Do you criticize Mr. Stephens for assuming

11   mid point of \$1.6 billion for the equity to Genco;

12   do you see that?

13      A.    Yeah.  The \$1.6 billion was an estimate that

14   was the midpoint of the estimates related to the

15   plants that would be transferred to the Genco.

16               There are other assets that are

17   transferred to the Genco, and so the estimates of

18   equity infusion in the Genco from the ComEd plants

19   would be roughly 2 billion.

20      Q.    What's the approximate original cost of the

21   plants?

22      A.    Which plants?



1 Q. The nuclear plants.

2 A. The 13 nuclear units? Approximately 14 to  
3 \$15 billion. The 2 billion relates to the --

4 Q. There's no question pending. Thank you.

5 A. Clarification.

6 Q. What is the basis for your claim that  
7 establishing Exelon Genco as a separate generating  
8 company would promote competition?

9 A. Fundamentally it's separating generation of  
10 electricity from the transmission and distribution  
11 of electricity which long term should promote  
12 additional entrants into the area.

13 And the belief is that the more  
14 generators and the more entrants that are in the  
15 electricity market will be beneficial to ratepayers.

16 Q. So it's increasing the number of  
17 participants in the market?

18 A. Yes.

19 Q. As a result of functionally separating the  
20 utility?

21 A. That's correct.

22 Q. Are you familiar with the functional

1 separation proceeding that's been pending before the  
2 Commerce Commission since 1998?

3 A. Not specifically, no.

4 Q. Do you know generally what Edison's position  
5 has been in that proceeding?

6 A. Not really.

7 Q. Do you know whether or not Edison proposed  
8 an integrated distribution company to avoid  
9 functionally separating the utility in that  
10 proceeding?

11 A. To avoid functionally separating the utility  
12 from what?

13 Q. From functionally separating the generation  
14 components from the transmission and distribution  
15 component of the utility?

16 A. I'm not familiar with that proposal.

17 Q. Would you agree that every customer interest  
18 that has presented testimony in this proceeding has  
19 concluded that Exelon Genco should not be allowed to  
20 reap benefits of additional decommissioning charges?

21 A. I don't believe that's true.

22 Q. That's the position -- is that your

1 understanding of the position of the industrial and  
2 health care coalition?

3 JUDGE CASEY: Are those one in the same?

4 MR. TOWNSEND: That's my clients. They're very  
5 important to me.

6 JUDGE CASEY: Not to be confused with  
7 Mr. Robertson's clients.

8 MR. TOWNSEND: I'll ask about them next or allow  
9 him to.

10 THE WITNESS: You're asking me what your position  
11 is?

12 BY MR. TOWNSEND:

13 Q. I'm trying to understand your understanding  
14 of our position.

15 Do you understand that the coalition that  
16 we represent opposes Exelon Genco receiving  
17 additional decommissioning charges above and beyond  
18 anything that currently exists in the  
19 decommissioning trust funds?

20 MR. ROGERS: I would object to having the witness  
21 characterize the positions of the other parties in  
22 the case. I don't see the relevance of that.

1       MR. TOWNSEND: Trying to get his understanding.  
2       JUDGE CASEY: The objection is sustained.  
3       JUDGE HILLIARD: We have got at least four and a  
4 half more scheduled hours of testimony.  
5       MR. TOWNSEND: Understood.  
6       JUDGE HILL: If you could move along.  
7       MR. TOWNSEND: I think that the basis for the  
8 remainder will be confidential documents, and so at  
9 least at this point I would yield to someone else  
10 conducting cross-examination with the understanding  
11 that at some point in the future we'll be going in  
12 camera.  
13       MR. HANZLIK: Can I just ask, are those the  
14 documents which we were asked about this morning or  
15 are these some other documents?  
16       MR. TOWNSEND: They are relating to confidential  
17 documents, some of which -- well, the documents that  
18 we received late on Friday or on Saturday  
19 interrelate with the other documents so. . .  
20       MR. HANZLIK: And just so the record is clear, we  
21 did provide color copies at the beginning of this  
22 afternoon as requested.

1 MR. TOWNSEND: Appreciate that. Thank you.

2 JUDGE HILLIARD: Color photographs. Did you  
3 straighten that out. Is that what you're telling  
4 us?

5 MR. HANZLIK: Yes.

6 JUDGE HILLIARD: You want to reserve the right to  
7 question him on these recently produced documents at  
8 some later point in time?

9 MR. TOWNSEND: If I may.

10 JUDGE CASEY: Counsel, there were some additional  
11 questions, though, that you had that aren't  
12 necessarily referring to those color copy documents;  
13 is that right?

14 MR. TOWNSEND: Not just the color documents but  
15 confidential documents.

16 JUDGE CASEY: In camera instead of going back and  
17 forth, we want to try to do it all at once. Okay.

18 Thanks, Mr. Townsend.

19 MR. TOWNSEND: Thank you.

20 JUDGE CASEY: Mr. Robertson.

21 MR. ROBERTSON: I have got a little bit. You  
22 want to take a break for a minute?

1 JUDGE CASEY: Why don't we take a -- why don't we  
2 take about a five-minute break and then come back.

3 We're off the record.

4 (Whereupon, a brief

5 recess was taken.)

6 JUDGE HILLIARD: On the record.

7 Mr. Robertson, please commence.

8 CROSS-EXAMINATION

9 BY

10 MR. ROBERTSON:

11 Q. Hello, Mr. Berdelle.

12 A. Hello, Mr. Robertson.

13 Q. I just want to clear up something, if I can,  
14 at the beginning. May save a little time.

15 Do you agree or disagree with the  
16 statement that says if the market price for  
17 electricity and other factors affect the  
18 profitability or are favorable, the Genco can employ  
19 the profits it will receive to compensate for the  
20 shortfall in nuclear decommissioning?

21 A. I agree with that statement, to the extent  
22 the shortfall exists.

1 Q. Okay. Would you turn to Page 2 of your  
2 direct.

3 With regard to your statement at  
4 Page 2, Lines -- I think it begins on Line 3 and  
5 ends on Line 6, Mr. Townsend discussed, I think,  
6 this same type of statement with you.

7 A. Yes.

8 Q. Are there any circumstances under which in  
9 your opinion ComEd would be prohibited from  
10 recovering decommissioning costs from retail  
11 customers?

12 A. Yes.

13 If ComEd unreasonably spent costs in the  
14 process of decommissioning, then those would not be  
15 recovered from ratepayers.

16 Q. So the -- is there any other circumstance?

17 A. That's the only one I can think of.

18 Q. So am I correct that it's the company's  
19 position that regardless of to whom the plants are  
20 transferred and regardless of that entity's  
21 assumption of responsibility for nuclear  
22 decommissioning, Commonwealth Edison would have the

1 ongoing right to recover nuclear decommissioning  
2 costs from customers; is that correct?

3 A. Could I have the question read back?

4 (Whereupon the record was  
5 read as requested.)

6 THE WITNESS: I think it's ComEd's position that  
7 to the extent that they contract with that third  
8 party for satisfaction of that third party taking on  
9 or absorbing the decommissioning liability, then  
10 ComEd has the right to recover those costs from  
11 ratepayers.

12 BY MR. ROBERTSON:

13 Q. So am I correct then that in the absence of  
14 Commonwealth Edison's contracting to assume that  
15 responsibility, Commonwealth Edison would have no  
16 right to continue to recover nuclear decommissioning  
17 costs from customers under those circumstances?

18 A. If it transferred the plants to a third  
19 party, I believe that's correct.

20 JUDGE CASEY: I'm sorry, I missed that.

21 If who transferred it to a third party.

22 THE WITNESS: If ComEd transferred the plants to



1 a third party and did not contract for the unfunded  
2 decommissioning liability, then it would not have  
3 the right to collect.

4 BY MR. ROBERTSON:

5 Q. Now, as I understand it, it is the company's  
6 position that Genco itself has no legal authority to  
7 collect decommissioning costs from ComEd's retail  
8 customers; is that correct?

9 A. That's correct.

10 Q. Now, is it also correct that in Section 6.6  
11 of -- strike that.

12 Is it Section 6.6 of the contribution  
13 agreement which addresses decommissioning recovery  
14 issue as between Genco and ComEd?

15 A. Yes.

16 Q. And is there anything in Section 6.6 that  
17 limits the obligation of ComEd to recover nuclear  
18 decommissioning costs to six years?

19 A. No.

20 Q. At Page 5, question and answer 9, Line 25 to  
21 31 of your direct testimony, Exhibit 2, you state  
22 that the contribution agreement requires ComEd to

1 collect the decommissioning amounts approved for  
2 recovery by the Commission under the PUA in  
3 Rider 31; is that correct?

4 A. Yes.

5 Q. Is it also correct that the contribution  
6 agreement does not specify a particular dollar  
7 amount to be collected by ComEd?

8 A. That's correct

9 (Change of reporter.)

10 BY MR. ROBERTSON:

11 Q. Is it correct that the contribution  
12 agreement does not specify a particular -- I'm  
13 sorry. Strike that, specify a range of  
14 decommissioning amounts to be collected by ComEd and  
15 turned over to Genco?

16 A. It does not.

17 Q. Am I -- I'm going to try to shorten this  
18 line of questioning up.

19 Am I correct in assuming that there's  
20 nothing in the documents in this transaction  
21 involving the transfer of the nuclear assets which  
22 would prevent -- strike that.

1                   There is nothing in the documents  
2 associated with the transfer of the nuclear units  
3 that obligates Commonwealth Edison to pay nuclear  
4 decommissioning costs for a particular period of  
5 time or in a particular amount?

6       A.     That's correct.

7       Q.     I take it that the Genco representatives  
8 that you talked about with Mr. Townsend are aware  
9 that the -- ComEd is proposing that recovery be  
10 limited to six years; is that right?

11      A.     That's correct.

12      Q.     Now, absent the agreement of  
13 Commonwealth Edison to be obligated for these  
14 nuclear decommissioning costs, Genco would not be  
15 entitled to recovery of decommissioning costs from  
16 ComEd for any period of time, is that correct, or  
17 from ComEd's customers, I mean?

18                   I think we already established that  
19 earlier.

20      MR. ROGERS:    I thought it was asked and answered  
21 also.

22      MR. ROBERTSON:   Okay.   Then I withdraw the

1 question.

2 BY MR. ROBERTSON:

3 Q. Now, in your cross-examination -- again, I'm  
4 going to try to shorten up a line of questions  
5 because Mr. Townsend touched on it, but I want to  
6 make sure I understand.

7 Would you agree with me, Mr. Berdelle,  
8 that this agreement -- contribution agreement that  
9 will exist between ComEd and Genco is not the result  
10 of an arms-length negotiation between two separate  
11 parties?

12 A. Yes.

13 Q. Now, the end result of the creation of  
14 Exelon Genco will be that all of the generating  
15 resources that were previously owned either through  
16 contract or directly by Commonwealth Edison, all of  
17 the PECO generating resources as well as those of  
18 Amergen would be collected into a single generating  
19 company; is that correct?

20 A. That's correct, contingent upon the  
21 satisfactory resolution of this proceeding.

22 Q. Okay. Now, would you agree with me that if

1 that's -- well, strike that.

2                   Were PECO, Commonwealth Edison and  
3 Amergen competitors in the wholesale market prior to  
4 this time?

5       MR. ROGERS:   I think that is the beyond the  
6 scope of this witness' direct examination.

7       MR. ROBERTSON:   I don't think so. The witness  
8 has talked about the benefits that arise -- benefits  
9 to competition. I think the question --

10      JUDGE HILLIARD:   If you know the answer, answer  
11 the question, please.

12      THE WITNESS:    Yeah, I don't believe, prior to  
13 the contribution agreement being established, that  
14 ComEd and Amergen were competitors. I don't think  
15 Amergen owned any plants in the immediate vicinity  
16 that would constitute a competitor.

17                   PECO may have been, prior to the creation  
18 of this agreement, a -- an entity which ComEd  
19 purchased or sold electricity to.

20 BY MR. ROBERTSON:

21       Q.   All right. Now, would you agree with me  
22 that Illinois Power was a competitor of Commonwealth

1 Edison in the wholesale market?

2 A. Yes.

3 Q. And Amergen bought the Clinton nuclear unit;  
4 isn't that correct?

5 A. Amergen has subsequently purchased the  
6 Clinton nuclear plant.

7 Q. So the end result is that we now have a  
8 single generator -- generating company where we used  
9 to -- after all this is done where we used to have  
10 three; is that correct?

11 A. No. No, there's many generating companies  
12 in this area.

13 Q. Well, of the three that we're talking about,  
14 they've been combined into one; is that correct?

15 A. The three being?

16 Q. The Clark nuclear unit, which is owned by  
17 Illinois Power was a competitor of yours; your  
18 generation, and the PECO generation.

19 A. Oh, okay. That will become combined into  
20 one after the merger is consummated, correct.

21 Q. Do you know whether or not it has been -- if  
22 you know, Mr. Berdelle, whether or not it's been

1 Commonwealth Edison's position in presentations made  
2 to this Commission that it is necessary for a  
3 competitive wholesale generating market to develop  
4 if there's going to be retail competition in  
5 Illinois?

6 A. I would say to have successful retail  
7 competition, that would be a correct statement.

8 Q. Okay. Would you turn to Page 9 of your  
9 direct, Question and Answer 18.

10 A. Yes.

11 Q. Now, there, you ask yourself, "Will the  
12 Genco perform nonradiological decommissioning at the  
13 stations"; is that correct?

14 A. That's correct.

15 Q. Now, you don't answer that question yes or  
16 no, do you?

17 A. No, not -- not this answer, I do not.

18 Q. Okay. And at the time you prepared your  
19 testimony, was it safe to say that Commonwealth  
20 Edison intended to meet all the applicable legal  
21 requirements for decommissioning, no more, no less,  
22 in the context of Genco being responsible for

1 decommissioning?

2       A.    It was the company's intention when we first  
3 filed this testimony that Genco would perform both  
4 radiological and nonradiological decommissioning, to  
5 the extent funds would be available, and would  
6 perform those decommissioning activities in  
7 accordance with all existing laws.

8       Q.    But that's not the response you gave to this  
9 question, is it?

10      A.    No, not fully; that's correct. But that was  
11 the company's intention.

12      Q.    Would you go to Page 11 of your direct,  
13 Question and Answer 25.

14      A.    Yes.

15      Q.    Why under this FASB standard can't  
16 Commonwealth Edison recognize the decommissioning  
17 fund assets as partially offsetting the liability  
18 ComEd will have?

19      A.    The Financial Accounting Standards Board  
20 does not allow offsetting assets against liabilities  
21 in the context of nuclear decommissioning.

22      Q.    Is that because the nuclear decommissioning



1 funds are ded- -- I don't know the correct  
2 accounting term, but are dedicated to nuclear  
3 decommissioning and that's it?

4 A. No, the accounting rules only allow  
5 offsetting when a liability is actually -- I'm  
6 trying to think of the right term.

7 When the liability has actually been  
8 settled through the trustee whereby the trustee is  
9 actually settling the liability -- the entity, and  
10 then in that case offset the asset with the  
11 liability.

12 Q. When the decommissioning actually occurs and  
13 distribution is made from the trust?

14 A. Right.

15 Q. Okay.

16 A. Actually, the industry attempted to convince  
17 the Financial Accounting Standards Board to consider  
18 offsetting in this context, but it expressly denied  
19 it.

20 Q. Now, are there other ways, hopefully, for  
21 Genco to obtain the revenues necessary to  
22 decommission units, to the extent that underfunding

1 occurs, aside from collecting those revenues through  
2 margin on sales of electricity?

3 A. Other than through margins of sales of  
4 electricity?

5 Q. Yes.

6 A. There may be.

7 Q. Cost reductions?

8 A. Well, that affects your margins on sales.

9 Q. Okay. So all of those activities for cost  
10 reductions or increased sales, or whatever, are what  
11 goes to make up the margin?

12 A. Correct.

13 Q. Okay. Would you turn to page -- make sure I  
14 got the -- just bear with me a second. I want to  
15 make sure I've got the right testimony.

16 Turn to Page 11 of Exhibit 6, your  
17 supplemental direct.

18 A. I'm there.

19 Q. And I'm going to talk to you about your  
20 testimony that begins at Line 13 on that page and  
21 continues over to Line 11 on the next page, okay?

22 A. Yes.

1 Q. Now, you begin at the beginning of this  
2 portion of your testimony to describe the legal  
3 authority of ComEd to make decommissioning  
4 collections even if its petition is not approved; is  
5 that correct?

6 A. Correct.

7 Q. Did you prepare any part or a portion of  
8 this testimony?

9 A. This specific portion of this testimony?

10 Q. Yes.

11 A. No, this was prepared under guidance by  
12 counsel.

13 Q. Are you familiar -- strike that.

14 I'll state the obvious, because you  
15 sounded kind of proud to be an accountant and not a  
16 lawyer, Mr. Berdelle. Are you familiar with the  
17 rules of statutory construction as determined by  
18 Illinois courts?

19 A. Not really.

20 Q. Is it true that you testify at Page 12 of  
21 Exhibit 6 of your supplemental direct that when  
22 ComEd sells or disposes of its ownership in a

1 nuclear power plant, it may contract for the  
2 unfunded decommissioning liability to be assumed by  
3 another entity?

4 A. Yes.

5 Q. Now, you reference Section  
6 8-508.1(c)(3)(iii) of the Act to support that  
7 statement; is that correct?

8 A. That's correct.

9 Q. Now, I take it that you believe, because you  
10 put it in your testimony here, that Section  
11 8-508.1(c)(3)(iii) of the Act authorizes ComEd to  
12 contract for the unfunded decommissioning liability  
13 to be assumed by Genco; is that correct?

14 A. I think what the Act authorizes is that, to  
15 the extent that ComEd does contract with Genco for  
16 the unfunded liability, it allows continued  
17 collections of those costs from ratepayers.

18 Q. Well, don't the words you quote in that  
19 sentence there at Line 2, beginning at Line 1 and  
20 continuing to Line 6 of Edison Exhibit 6, Page 12,  
21 isn't that language taken directly from Section  
22 8-508.1?

1       A.    Some of it is.  I don't believe all of it  
2 is.

3       Q.    I want to read you the first sentence of  
4 subsection (iii) we've just been discussing.

5                "In the event a public utility sells or  
6 otherwise disposes of its direct ownership interest,  
7 or any part thereof, in a nuclear power plant."

8                Now, that's not the whole sentence, but  
9 that's basically the quotation in your testimony,  
10 isn't it?

11      A.    Right, and that is in quotations.  So that's  
12 a direct quote from the Act.

13      Q.    Then if I go a little farther on in that  
14 sentence, in fact the last four words in that  
15 sentence are, "assumed by another entity"?

16      A.    Correct.

17      Q.    So that also comes from --

18      A.    That's correct.

19      Q.    Okay.  So the thrust of your testimony here  
20 is that it is (iii) of Section 8-508.1(c)(3) which  
21 provides that when ComEd sells or otherwise disposes  
22 of its direct ownership interest in a nuclear plant,

1 it may contract for the unfunded decommissioning  
2 liability to be assumed by another entity, isn't it?

3 MR. ROGERS: I'm going to object to continued  
4 questions on a legal issue here.

5 This was testimony that was given in  
6 response to a specific question from the Hearing  
7 Examiners. So some witness had to sponsor it, but  
8 the question is, what is the legal basis for the  
9 assessment. And he's testified that he is a  
10 nonlawyer and was prepared by counsel.

11 We'll all have a chance to address this  
12 in our briefs. I thought perhaps this would be more  
13 rapid than it was, but I do think we're getting in  
14 just testimony about law and that doesn't probe this  
15 witness's knowledge.

16 MR. ROBERTSON: Well, this witness is sponsoring  
17 the testimony. The company, in its response to  
18 Questions 1 through 9 here, Exhibit 14, if you'll  
19 note, took the opportunity to say in its last -- in  
20 response to Question No. 9, "What authority does the  
21 Commission have to approve ComEd's petition? Please  
22 provide a detailed statutory analysis." It took the

1 opportunity to say they were going to reserve that  
2 issue for their brief.

3           They could have done that here, but they  
4 didn't do it. They put this witness forward to  
5 state what the company's legal position is and I  
6 think I have a right to cross him, recognizing that  
7 he's not a lawyer.

8       JUDGE HILLIARD: Where are you going with this?

9           I mean, he's told you he's not a lawyer  
10 and you're reading the statute to him and he agrees  
11 to, yeah, that's the statute.

12           What's the point?

13 BY MR. ROBERTSON:

14       Q. Well, let me go to this point:

15           Isn't it true, Mr. Berdelle, that there  
16 is no specific authority in (iii) for the company to  
17 contract with another entity to assume its nuclear  
18 decommissioning liability? In fact, subparagraph 3  
19 really addresses the issue of refunds at the time of  
20 a transfer of the nuclear units?

21       MR. ROGERS: I again object. It's just calling  
22 for a debate about a question of law.

1 JUDGE HILLIARD: Well, if he has an  
2 understanding of the provision that he wants to tell  
3 us what it is, that's fine. If he doesn't know the  
4 answer, just tell us he doesn't know the answer.

5 THE WITNESS: Well, it's my understanding that  
6 the company's position, from a nonattorney, is that  
7 the company is contracting with the Genco -- ComEd  
8 is contracting with the Genco to take on the full  
9 nuclear decommissioning liability associated with  
10 the 13 units.

11 And in return for taking on that  
12 liability, ComEd will transfer the full amount in  
13 the decommissioning trust funds and supplement those  
14 amounts through collections for a period of six  
15 years of ratepayers, collections of certain amounts  
16 from ratepayers. It's the company's petition in  
17 this proceeding that that collection be  
18 approximately 121 million.

19 MR. ROBERTSON: Would you read the question back  
20 for me, please.

21 (Record read as requested.)

22 MR. ROBERTSON: I move to strike the entire



1 answer as nonresponsive.

2 JUDGE HILLIARD: Sustained.

3 BY MR. ROBERTSON:

4 Q. Can you answer the question I asked you,

5 Mr. Berdelle?

6 A. Well, I could embellish the last answer.

7 And I should have added to the last answer that --

8 Q. Wait, wait, wait. You can't embellish an

9 answer that's not in the record anymore.

10 A. Well, it's the company's position that there

11 would be no refunds owed because ComEd would be

12 satisfying the liability that would be transferred

13 to the Genco by transferring the trust funds and

14 paying 121 million for six years into those trusts.

15 That is a full satisfaction of the

16 liability that Genco is absorbing. Therefore, there

17 are no refunds that are due and owing.

18 MR. ROBERTSON: In all due respect to

19 Mr. Berdelle, I don't think that answer is

20 responsive either, and therefore, I move to strike

21 and ask the witness to be directed, if he can, to

22 answer the question that I asked.

1       MR. ROGERS:    I think this illustrates the  
2 problem, if we're just going to debate the law. The  
3 witness has done the best he can --

4       MR. ROBERTSON:   Then I move to strike Lines 12  
5 through 46 on Exhibit 6, Page 11, and Lines 1  
6 through 11 on Exhibit 6, Page 12.

7                    If I can't ask the witness what his  
8 understanding of the testimony that he's sponsoring  
9 is now, he may not. He may tell me he doesn't  
10 understand, that's fine. But he's still not  
11 answered the specific question which is pretty  
12 simple, and the language here is pretty clear.

13       MR. ROGERS:    I think he has done his best to  
14 answer, but what he's illustrating is is that he's  
15 not a lawyer.

16                    The testimony was provided because we  
17 were asked specifically to provide the testimony and  
18 so we did the best we could.

19       MR. ROBERTSON:   I'm sorry. What he's  
20 illustrating is, is he's a darn good witness and  
21 he's not answering the question I asked, but he's  
22 answering the question that he wanted me to ask and

1 I haven't.

2 Can you answer the question that I asked,

3 Mr. Berdelle?

4 JUDGE CASEY: Hold on one second.

5 MR. ROBERTSON: Okay.

6 JUDGE CASEY: Your first motion to strike the

7 answer as unresponsive is granted, all right?

8 Now, the question -- we're going to read

9 back the question one more time. And, Mr. Berdelle,

10 if you can answer it, fine. If you can't, fine.

11 But then we're going to kind of pull back the reigns

12 here.

13 JUDGE HILLIARD: Listen careful carefully to the

14 question and answer it or don't answer it.

15 (Record read as requested.)

16 THE WITNESS: And I guess the answer is I don't

17 know if there's specific authority in that citation.

18 BY MR. ROBERTSON:

19 Q. So you don't know -- your testimony is you

20 don't know whether this statement at Lines 1 through

21 6 of Page -- Page 12, Exhibit 6 is correct?

22 MR. ROGERS: I disagree with that. You're

1 mischaracterizing the statement.

2 THE WITNESS: My statement -- or the statement  
3 here is correct.

4 BY MR. ROBERTSON:

5 Q. Well, you've already testified that this  
6 statement is based on 508.1 and the section -- the  
7 subsection of that section that's quoted here, and  
8 that the language that you quote comes from that  
9 section?

10 A. The language in quotation marks comes from  
11 that section.

12 Q. Okay. So it's not your -- this statement is  
13 not intended to say that it is 8-508.1 which  
14 provides the authority for such a contract; is that  
15 correct?

16 A. I don't know what provision in the law  
17 allows ComEd to contract with Genco, but I'm advised  
18 by my counsel it is within existing law, and I don't  
19 know whether this is the citation or there's another  
20 one.

21 Q. Well, I know you're not a lawyer, but would  
22 you agree with me that the word "contract" doesn't

1 appear anywhere in that subsection?

2 MR. ROGERS: I think you have to bring that  
3 section out. He does not have it in front of him.  
4 And he asked me and I don't have it either, but I --

5 MR. ROBERTSON: If I read it to you, will you --

6 MR. ROGERS: I don't see the point. Either it  
7 is or it's not.

8 MR. ROBERTSON: Okay. Strike that.

9 JUDGE CASEY: And it's not quoted. The word  
10 contract's not within his passage.

11 MR. ROBERTSON: Oh, I understand that.

12 JUDGE CASEY: Okay.

13 BY MR. ROBERTSON:

14 Q. Now, you're not here to testify -- you're  
15 here to testify for Commonwealth Edison; is that  
16 correct?

17 A. That's correct.

18 Q. You're not here as a representative of the  
19 Genco?

20 A. That's correct.

21 Q. You have no direct knowledge of what Genco  
22 would accept or would not accept with regard to any

1 decision made by this Commission on nuclear  
2 decommissioning cost recovery; is that correct?

3 A. That's correct. I only have knowledge in  
4 terms of what I would advise Genco to accept.

5 Q. And I haven't asked you that.

6 A. Right.

7 Q. Where in the contribution agreement -- maybe  
8 you have that. Let me look at it real quick. Maybe  
9 I'm not remembering correctly.

10 Would you go to Exhibit 8, please, of  
11 your rebuttal testimony and look at Line 22 where  
12 you talk about the \$2 billion.

13 A. I'm sorry. What page was that?

14 JUDGE CASEY: What page?

15 MR. ROBERTSON: I'm sorry. Page 15, Line 22.

16 THE WITNESS: Yes.

17 BY MR. ROBERTSON:

18 Q. If I wanted to -- if we use the \$2.2 billion  
19 in consideration instead of the 1.6 billion that's  
20 mentioned here, would you agree with me that using  
21 Mr. Stevens' approach, the return would be in the  
22 neighborhood of 25 percent?

1       A.    No.

2       Q.    Okay.

3       A.    Because I don't agree with Mr. Stevens'  
4 approach.

5       Q.    Well, that's what I thought you were going  
6 to say.

7                   Do you agree or disagree with other  
8 witnesses in this proceeding who have suggested that  
9 as long as there is a positive difference in the  
10 growth rate of the decommissioning trust fund --  
11 between the growth rate and the decommissioning  
12 trust fund and the rate of inflation -- strike that.

13                   In Exhibit 8 at Page 7, Lines 24 to  
14 28 -- 24 through 28, you state, "The Commission is  
15 being offered the opportunity to approve  
16 decommissioning collections at a rate that would  
17 only be adequate if a cost escalation rate  
18 significantly below the rate supported by the  
19 evidence were achieved"; is that correct?

20       A.    Yes, that's correct.

21       Q.    And also elsewhere in your direct testimony,  
22 you refer to the company's desire to settle the

1 decommissioning issue --

2 A. That's correct.

3 Q. -- is that correct?

4 A. That's correct.

5 Q. Do you consider this proposal to be a  
6 settlement?

7 A. I think this would settle the issue of how  
8 much to collect from ratepayers.

9 Q. So in that sense, it is a settlement  
10 proposed by Commonwealth Edison?

11 A. Yes.

12 Q. Now, won't the approval of decommissioning  
13 collections at a rate that would only be adequate if  
14 a cost escalation rate significantly below the rates  
15 supported by the evidence were achieved would  
16 guarantee that decommissioning will be underfunded?

17 A. Are you asking me if the company's proposal  
18 would guarantee that the decommissioning trust fund  
19 would be underfunded?

20 Q. Well, let me ask you this way:

21 Were you intending to suggest that when  
22 you made this statement?



1       A.    I wouldn't call it a guarantee, per se, but  
2    what I'm suggesting is this is an opportunity to  
3    take -- or shed some risks for ratepayers on behalf  
4    of the ratepayers that they settle a liability  
5    financially through the payment of \$121 million for  
6    six years and have no additional risks, that  
7    their -- that liability would be greater.

8       Q.    So you didn't mean to suggest by this  
9    statement that if the company's proposal is adopted  
10   and that proposal assumes an unrealistic escalation  
11   rate, decommissioning will necessarily be  
12   underfunded?

13      A.    When you say unrealistic escalation rate,  
14   are you referring to the 4.11 percent?

15      Q.    Well, yes.

16      A.    I would agree that the 4.11 percent is  
17   somewhat unrealistic in terms of what the liability  
18   will grow at over the next 20 or 25 years, but what  
19   the company's proposal is, is that it will accept  
20   the risks associated with that unrealistic inflation  
21   estimate for the benefit of settling this issue  
22   forever more and promoting competition through the

1 movement of these plants in the creation of a Genco.

2 Q. If the Commission adopts the proposal made  
3 by Commonwealth Edison and all the assumptions  
4 contained in that proposal turn out to be correct,  
5 will decommissioning be fully funded?

6 A. And by the Commission accepting the  
7 company's proposal and all the assumptions contained  
8 in that proposal, we're presuming that the 4.11  
9 escalation rate actually happens.

10 In that case, I believe, if all the  
11 assumptions including that escalation assumption  
12 were to take place, I believe the trust would be  
13 adequately funded.

14 Q. Is it correct that under this proposal,  
15 Genco -- it is not anticipated that had Genco will  
16 make any contributions to the nuclear  
17 decommissioning trust fund in the initial years?

18 A. I would say that the Genco recognizes that  
19 it is taking substantial risks in the context of  
20 this proceeding.

21 So I would not agree with the premise  
22 that it's not anticipated that it wouldn't be making

1 any contributions over the lives -- the remaining  
2 lives of these plants.

3 Q. Maybe you misunderstood my question. And  
4 I'm not going to move to strike the answer, but my  
5 question was, am I correct in assuming that the  
6 proposal contemplates that Common -- that Genco  
7 will not be required to make any contributions to  
8 the nuclear decommissioning trust funds during the  
9 initial years at least through 2004?

10 A. Oh, I'm sorry. I didn't understand the time  
11 period we were talking about.

12 It's uncertain whether Genco will make  
13 any contributions between the creation of the Genco  
14 and 2004, but the proposal as laid out by the  
15 company did not assume contributions by the Genco.

16 MR. ROBERTSON: I think I'm just about done.

17 I don't want you to think that I forgot  
18 by my question for Mr. McDonald, but -- about the  
19 return, but we can take that up tomorrow in the  
20 confidential section.

21 And I might have some questions based on  
22 the slides that were presented and talked about

1 earlier today, but if other parties touch on the  
2 same issues, I won't ask those questions.

3           The other thing is, I would like to place  
4 into the record the trust agreements, the  
5 net-tax-qualified and the nontax-qualified trust  
6 agreements that the company produced in discovery in  
7 this case. I don't have copies today. And I guess  
8 I'd like to know for the record whether the company  
9 would object to introduction of those as a  
10 late-filed exhibit.

11       MR. ROGERS: Could you show them to us over the  
12 evening or tomorrow morning and I'll take a look and  
13 see.

14       MR. ROBERTSON: I think I've got them in my  
15 briefcase because you gave them to us in response  
16 to --

17       MR. ROGERS: I think we did, too, but if you  
18 could -- on the spot --

19       MR. ROBERTSON: That's fine. I didn't want to  
20 waive the opportunity to try to --

21       JUDGE CASEY: You'll have that opportunity to  
22 renew it in the morning.

1 MR. ROBERTSON: All right.  
2 Thank you very much.  
3 JUDGE CASEY: You're welcome.  
4 JUDGE HILLIARD: Try to get three copies of the  
5 trust agreements for the court reporter.  
6 JUDGE CASEY: Okay.  
7 Who else has cross?  
8 Mr. Jolly?  
9 MR. JOLLY: Yeah. I have relatively brief  
10 nonconfidential cross-examination. Just one subject  
11 area.  
12 JUDGE CASEY: Okay.  
13 CROSS-EXAMINATION  
14 BY  
15 MR. JOLLY:  
16 Q. Good afternoon, Mr. Berdelle. My name is  
17 Ron Jolly. I represent the City of Chicago?  
18 JUDGE HILLIARD: For the record, it's now the  
19 evening.  
20 THE WITNESS: Good evening, Mr. Jolly.  
21 BY MR. JOLLY:  
22 Q. Good evening.

1                   Could you turn to Pages 12 through 13 of  
2 your supplemental direct?

3                   And on those pages, you respond to a  
4 Hearing Examiner question stating that there is no  
5 fixed start date regarding when the trusts and the  
6 plans will be transferred; is that correct?

7       A.    As of today, that's right. We cannot fix a  
8 start date. It's all contingent upon the merger  
9 consummating as well as a reasonable resolution of  
10 this proceeding.

11     Q.    Yeah, and you state that, and you also state  
12 that you're waiting for regulatory approval from the  
13 SEC and NRC; is that correct?

14     A.    That's correct.

15     Q.    Okay. And just -- as I read your testimony,  
16 it seems that you expect that the last hurdle that  
17 you will have to jump will be this proceeding; that  
18 is, to determine whether or not, in Edison's  
19 opinion, there is sufficient funding for the  
20 transfer to go forward; is that correct?

21     A.    That's correct, to actually create the Genco  
22 and transfer the nuclear plants to the Genco.

1 Q. And the trust fund as well?

2 A. And the trust funds, that's correct.

3 Q. And do you have any estimate as to when this  
4 proceeding might end?

5 A. Do I?

6 Q. Yes.

7 A. I've heard that this proceeding could end as  
8 early as late November or early December.

9 Q. Okay. Now, until the plants are transferred  
10 and until -- well, until this proceeding comes to an  
11 end and assuming it's a result that Edison is  
12 satisfied with and Genco is satisfied with, there  
13 will -- there will continue to be ongoing ratepayer  
14 contributions to the trust fund; is that correct?

15 A. That's correct. And that's built into our  
16 proposal.

17 Q. Okay. Well, what -- in your proposal,  
18 what -- when did you assume that an order would be  
19 issued in this case?

20 A. We didn't assume when an order would be  
21 issued, but we assumed that the Genco would be  
22 created on January 1, 2001.

1 Q. Okay. And so when you state at Page 6, Line  
2 46 of your testimony, you state there that there's  
3 approximately \$2.5 billion in the trust fund as of  
4 that date; is that correct?

5 A. Well, there's approximately 2.5 billion in  
6 the trust as of the end of '99. As of the end of  
7 2000, the assumption will be that that 2.5 would  
8 grow by 7.36 percent after taxes and have an  
9 additional 84 million deposited into the trust which  
10 represents ratepayer collections during the year  
11 2000.

12 Q. Okay. So the -- so it'd be 7.36 percent  
13 times the 2.5 billion?

14 A. Right.

15 Q. Which is --

16 A. Plus 84, roughly.

17 Q. Okay. And how is that -- how is that  
18 incorporated into the proposal in this case?

19 A. That's all built into the fundamental  
20 proposal that makes up the calculation that takes  
21 LaGuardia's 5.6 billion of decommissioning costs,  
22 grows it to the future and would discount it to the



1 present to determine the shortfall and the shortfall  
2 that the company's proposing to collect from  
3 ratepayers that balance the risks. And what the  
4 company believes to be adequate funding is the 121  
5 million for six years. The overall framework of the  
6 proposal.

7 Q. Okay. So that is incorporated into your  
8 conclusion that Edison's proposal would save  
9 ratepayers \$1 billion?

10 A. Yes.

11 MR. JOLLY: Okay. I have nothing further that  
12 is not confidential.

13 JUDGE CASEY: I'm sorry?

14 MR. JOLLY: That is not confidential.

15 JUDGE CASEY: With respect to the confidential,  
16 Mr. Jolly, how much time would you expect that you'd  
17 be needing for that.

18 MR. JOLLY: Approximately an hour.

19 JUDGE CASEY: Does that depend upon what  
20 Mr. Townsend or Mr. Robertson have as well?

21 MR. JOLLY: Yes.

22 JUDGE CASEY: So that time could be

1 significantly shortened?

2 MR. JOLLY: Yes, I would expect that we would  
3 replicate each other and cover some of the same  
4 ground.

5 JUDGE CASEY: Additional cross-examination?

6 MS. DOSS: Yes.

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1 CROSS-EXAMINATION

2 BY

3 MS. DOSS:

4 Q. Good evening, Mr. Berdelle. Leijuana Doss  
5 on behalf of the People of Cook County.

6 A. Good evening, Ms. Doss.

7 Q. If you could return -- could you turn to  
8 your rebuttal testimony.

9 Now, with respect to your revised  
10 proposal on Page 2, Lines 31 through 38, you  
11 indicate that the surplus, if there's any surplus,  
12 then it will be used for nonradiological  
13 decommissioning, correct?

14 A. I'm not on that line, no, but that is part  
15 of the proposal which is not on that line.

16 Q. Okay. What are the incentives or guarantees  
17 you mentioned that ratepayers do have that Genco  
18 will use least-cost methods to perform radiological  
19 decommissioning?

20 A. Well, I think the incentives really fall on  
21 the Genco, not on ratepayers.

22 Q. Right. And I'm saying what incentives would

1 Genco have?

2 A. Right. I think the incentives that Genco  
3 has is that the proposal, as outlined in this  
4 proceeding, is creating a substantial level of risk  
5 that there will be insufficient funds available for  
6 decommissioning. And so Genco will have tremendous  
7 incentive to use whatever funds it has to  
8 efficiently, both radiologically and  
9 nonradiologically, decommission the sites within the  
10 money that it has available to it.

11 Q. Okay. Now, assume on Page -- well, for --  
12 go to Page 16 through 17 of your rebuttal testimony.

13 A. Yes.

14 Q. All right. I assume that there is enough  
15 money for nonradiological decommissioning at all the  
16 plants.

17 But, say, mister new developer comes to  
18 Genco and says he wants to buy the property from  
19 Genco. He wants them to only do not radiological  
20 decommissioning and to secure the buildings, keep  
21 the buildings remaining, but he wants to buy it only  
22 with the non -- I mean -- strike that, only with the

1 radiological decommissioning done.

2 A. So he wants to buy it with all the rubble on  
3 the site.

4 Q. Exactly, because he's a developer and he has  
5 big dreams and he wants to do something with it.

6 Can Genco sell the property to  
7 Mr. Developer?

8 A. If Mr. Developer requires that the property  
9 be sold after only radiological decommissioning  
10 occurs, I think Genco could sell the property to  
11 Mr. Developer with the rubble at the site, and then  
12 the remaining dollars in the trust would be refunded  
13 to ratepayers.

14 Q. All right. When you say with the rubble,  
15 I'm saying there's buildings still standing. There  
16 is no rubble yet. There -- they just secured it for  
17 the NRC minimums.

18 A. No, the -- you misunderstand nonradiological  
19 decommissioning, as it's been explained to me by  
20 experts is that there is a substantial amount of  
21 rubble that is created through the decommissioning  
22 process and this rubble is noncontaminated, but it's

1 rubble nonetheless.

2 Q. Okay. That's fine. I'll accept that  
3 definition, but it does satisfy only the NRC  
4 minimums. This doesn't go beyond what's required as  
5 far as doing additional -- what you're proposing  
6 nonradiological decommissioning.

7 A. And the question again is?

8 JUDGE CASEY: I don't think there's -- there's  
9 not a question pending.

10 MS. DOSS: Right.

11 THE WITNESS: Oh.

12 BY MS. DOSS:

13 Q. So what I'm saying is if Mr. Developer says  
14 that he only wants you to do what the NRC requires,  
15 which includes some of the rubble that you're  
16 saying?

17 A. That's not the NRC requirement, but okay.

18 Q. Okay. But say we stop at the rubble --

19 A. Okay.

20 Q. -- okay? But there are buildings that are  
21 left because they haven't been contaminated and they  
22 fall within what ComEd has defined nonradiological

1 decommissioning and promise the ratepayers.

2           Could Genco sell that property as we've  
3 done in the hypo -- according to the hypo?

4     A.    I think Genco can sell the property.  I  
5 would point out, though, that those facilities that  
6 you referred to, those buildings are not a component  
7 of the nonradiological decommissioning request that  
8 is included in the LaGuardia studies.  Those have  
9 been excluded from the studies because those do not  
10 need to be dismantled in the decommissioning  
11 process.

12    Q.    So at the end, when you say that Genco will  
13 do nonradiological decommissioning, will that -- to  
14 what extent will that be done?

15    A.    As defined in the LaGuardia studies.

16    Q.    So there will be some buildings remaining?

17    A.    That's correct.

18    Q.    So ratepayers won't have every building  
19 knocked down or not to expect every building to be  
20 knocked down and for the fill to be completely  
21 cleaned?

22    A.    I don't know what the ratepayers'

1 expectations are.

2 Q. Well, is that ComEd's intent?

3 A. The proposal, as outlined here, is that  
4 nonradiological decommissioning where it makes sense  
5 would be performed, to the extent that the funds  
6 exist in the trust.

7 If it doesn't make sense to knock down a  
8 buildings if it's reusable, then, certainly, that  
9 building would not be dismantled.

10 Q. Would -- is it ComEd's intent that Genco  
11 would knock down the building as far as using those  
12 funds, if there were excess funds?

13 A. I think I answered that question.

14 Q. Okay. I would -- I don't think you did.

15 If -- say if there is a building that was  
16 standing and there was excess funds that were given  
17 to the -- excess funds still remaining and there's,  
18 like, two buildings left, okay?

19 A. Hm-hmm.

20 Q. Under ComEd's proposal, would those two  
21 buildings be knocked down and then the remaining  
22 funds be given to ratepayers or would those



1 buildings remain and then the money's -- and would  
2 give -- would be given to ratepayers?

3 A. Are those buildings that are reusable --

4 Q. We don't know.

5 A. -- in your hypothetical?

6 Q. We're just saying that Genco has the money.  
7 They're responsible for --

8 A. Well, I would say, to the extent they're  
9 reusable, it doesn't make sense to dismantle those  
10 facilities, especially if Mr. Developer wants those  
11 facilities intact, and then Genco would sell the  
12 land with those facilities, improved land in effect,  
13 and it'd refund the monies it hasn't used back to  
14 ratepayers.

15 Q. So --

16 A. If on the other hand --

17 Q. When would that refund occur?

18 Would it occur before they sell it,  
19 before Genco sells it to Mr. Developer or would it  
20 occur after they sell the buildings to (sic)  
21 ratepayers? When would ratepayers see a refund?

22 A. Well, I would say once the liability

1 associated with decommissioning of any site is fully  
2 satisfied, and it's been satisfied in your  
3 hypothetical by Genco performing radiological  
4 decommissioning and nonradiological rubble disposal  
5 and then selling the site to a developer, then that  
6 liability has been fully settled from Genco's  
7 standpoint.

8           And if there's any monies remaining in  
9 the trust at that point in time, then those would  
10 revert back to ratepayers, ultimately.

11       Q.   Now, is that currently in the proposal that  
12 ComEd is putting forth today?

13       A.   Well, it is with respect to the last site.

14           I should modify my statement that ComEd's  
15 proposal is that if a site were -- if the liability  
16 were satisfied for a particular unit and there were  
17 excess funds in the trust, those funds would first  
18 be used to pay whatever taxes are associated with  
19 the removing those funds from the trust, and then  
20 the remaining funds would be deposited in whatever  
21 fund were deemed to be underfunded at that point in  
22 time -- whatever trusts were deemed to be

1 underfunded at that point it time.

2 Q. Okay. Could you turn to Page 7 and 8 of  
3 your rebuttal testimony where you go into your  
4 discussion of low-level waste cost escalation.

5 A. Yes.

6 Q. If you look at Lines 38 through 40, you  
7 indicate that your use of new reg 1307, there's an  
8 escalation rate for waste burial cost of 22.44  
9 percent?

10 A. As I testified in Docket 99-0115, correct.

11 Q. Okay. Now, you use -- you subtracted the  
12 South Carolina tax, correct?

13 A. As required by the Commission formula,  
14 correct.

15 Q. And that's how you arrived at 22.44 percent?

16 A. That's correct.

17 Q. All right. But in Docket 99-0115, you  
18 testified that that was an unreasonable escalation  
19 rate, correct?

20 A. In the context of annual Rider 31  
21 proceedings, that's correct.

22 Q. So are you saying in this particular

1 proceeding, too, 22.44 percent is reasonable now?

2 A. Yes.

3 Q. And why is that?

4 A. Because in the '99 docket, under Rider 31,  
5 that was an annual proceeding. And each year, in  
6 that framework, to the extent that low-level waste  
7 disposal escalation would continue at a 22.4 (sic)  
8 percent rate, we -- the company would have the  
9 opportunity to go back and seek an increase in  
10 funding. But in the context of this proceeding,  
11 this is -- there's no opportunity to true up  
12 anything that -- that would result in an underfunded  
13 situation.

14 So the company's proposal in this  
15 proceeding is suggestive that, Well, 121 million for  
16 six years is what the company believes is a good  
17 balance between the risks that Genco is absorbing  
18 and the benefits that ratepayers would be receive.

19 But if one were to focus solely on what  
20 escalation to use in a traditional Rider 31 type of  
21 calculation, the 22.44 percent is the number that  
22 the -- the formula, the Commission-approved formula

1 governing this is.

2 Q. Okay. But the 22.44 percent is not what's  
3 used to derive at the \$121 million a year, is it?

4 A. That's correct.

5 Q. Now, you also state on Page 8 that there's a  
6 7.48 percent waste escalation which includes an  
7 assumption of one third of the actual three-year  
8 waste escalation; is that correct?

9 A. Well, it represents approximately one third  
10 of the 22.44 percent.

11 Q. And how did you determine to use one third?

12 A. I divided 7.48 percent into 22.44. That's  
13 how that one third was calculated.

14 Q. You divided -- I'm sorry. You divided 7.48  
15 into 22 --

16 A. The 7.48 was not a proposal that the company  
17 made. Rather, the company's proposal is based upon  
18 the cost of service that the staff and the company  
19 agreed to in the '99 proceeding.

20 That cost -- that's -- 121 --  
21 approximately 121 million. But the presumption in  
22 that proceeding is that the company would continue

1 to collect that amount of money for the remaining  
2 lives of these nuclear units.

3 Q. Okay. So --

4 A. Now -- now, the company's proposal's been  
5 modified and to truncate that 121 million for six  
6 years. And so to the implicit overall escalation  
7 rate that the company calculated, not that it's  
8 sponsoring, not that it believes that is the correct  
9 escalation rate, but the implicit escalation rate  
10 to -- that would result from having the 121 million  
11 for six years result in adequate funding of the  
12 trust is 4.11 percent.

13 Then given the fact that there's labor  
14 and other costs included in that overall escalation  
15 rate, we derived the 7.48 percent waste burial  
16 escalation rate. That's a derived number based upon  
17 all the chain of events I just described.

18 Q. Right. But the 4.11 percent is not pursuant  
19 to Rider 31, correct?

20 A. It's not pursuant to Rider 31, that's  
21 correct.

22 Q. Okay. And so, basically, you've created

1 7.48 percent, you've created 4.11 percent for this  
2 proceeding?

3 A. No -- yeah, the 121 million for six years,  
4 in effect, implicitly calculates to a 4.11 percent  
5 overall escalation rate. So that shows the risk  
6 that the company is taking in its proposal.

7 And to further calculate what a 4.11  
8 percent escalation rate -- overall escalation rate  
9 calculates to for a component of that escalation  
10 rate, that being the waste disposal component, that  
11 calculation results in a 7.48 percent component for  
12 the low-level waste burial costs.

13 Q. Okay. And that approximately was a third  
14 that you just used, right?

15 A. It's simply one third of the 22.44 percent  
16 rate that is calculated in the Commission-approved  
17 formula.

18 Q. That was calculated -- the one third was  
19 calculated in the Commission-approved formula or you  
20 used that --

21 A. It represents one third.

22 Q. Of the commission-approved formula?

1       A.     Correct.

2       Q.     Okay.  Now, when you subtract the

3       South Carolina tax from low-level waste burial, what

4       effect does that have on the escalation rate?  Does

5       it cause --

6       A.     Which escalation rate?

7       Q.     For low-level waste.  Does cause the

8       escalation rate to go up or down?

9       A.     The 22.44 escalation rate?

10      Q.     No, just, generally, any escalation rate.

11      A.     I don't know the answer to that.

12      Q.     All right.  Well, then in this proceeding

13      and in the '99 proceeding, if you subtract the

14      South Carolina tax, what effect would it have?

15      Would it cause the escalation rate for low-level

16      waste to go up or down?

17      A.     I don't recall.

18      Q.     Okay.  Now, I'd like you to refer to your AG

19      No. 3 response.  Do you have that?

20                     We'll mark this as Cook County Cross

21      Exhibit --

22      JUDGE CASEY:     24.



1 (Whereupon, Cross  
2 Exhibit No. 24 was  
3 marked for identification  
4 as of this date.)

5 BY MS. DOSS:

6 Q. Okay. Cook County Cross Exhibit 24.

7 Now, in this data request, you were asked  
8 to provide all calculations used by ComEd to  
9 determine the minimum amounts required to  
10 demonstrate feasible assurance for funds for  
11 decommissioning pursuant to 10 CFR 50.75, subsection  
12 C, correct?

13 A. Correct.

14 Q. Now, could you turn to the second page of  
15 that response?

16 A. Sure.

17 Q. Now, here, you have an escalation factor of  
18 3.1228; is that correct?

19 A. That's what it says.

20 Q. And then could you turn to the third page?  
21 You state that the amount -- funds for the  
22 operating -- strike that.



1       A.     Okay.

2       Q.     Now, the calculations that are made on page  
3   2 of Cook County Cross Exhibit 24 is based on 10 CFR  
4   50.75, which is ComEd's Cross  
5   Exhibit 18, correct?

6       A.     Yes.

7       Q.     Now, if you look on page 2 of the County  
8   Cross Exhibit 24 and also look at ComEd Cross  
9   Exhibit 18, page 2.

10      A.     I am there.

11      Q.     Okay. Is the formula that is on  
12   page 2, Subsection 2, ComEd Cross Exhibit 18 the  
13   same formula that you used in Cook County Cross  
14   Exhibit 24 on the second page?

15      A.     I believe so.

16      Q.     Yes or no?

17      A.     Yes.

18      Q.     Now, if you look at ComEd Cross Exhibit 18,  
19   page 2, it says, Subsection 2, that B is an  
20   escalation factor for waste burial and is to be  
21   taken from NRC Report New Reg 1 307 and in quotation  
22   marks, report on waste burial charges, end of

1 quotation marks; is that correct?

2 A. Correct.

3 Q. Okay. Does anywhere in this -- in that  
4 section, does it say that it is an estimated  
5 increase in New Reg 1307, which you refer to on page  
6 3 of Cook County Cross Exhibit 24?

7 A. No. New reg 13 -- or 10 CFR 50.75 does not  
8 state estimated anywhere.

9 Q. Okay. All right no further questions on  
10 that.

11 Isn't it true that ComEd is still using  
12 the low-level waste cost estimate of  
13 Mr. Vance for an Illinois facility in this  
14 proceeding?

15 A. In this proceeding?

16 Q. Yes. Or do you know?

17 A. Mr. Vance did an estimate of low-level waste  
18 disposal cost back in 1996 that was used in the  
19 calculation of decommissioning costs that Tom  
20 LaGuardia used in his determination of  
21 decommissioning costs in 1996 dollars.

22 What we are using in this proceeding,

1 then, is those decommissioning costs in 1996 dollars  
2 modified by a few things that occurred in '99 and  
3 then escalated to 2000 dollars.

4 Q. Now, do you know what escalation rate Mr.  
5 Vance used for his Illinois facility that is used by  
6 Mr. LaGuardia?

7 A. Mr. Vance, I think, calculated the cost of  
8 an Illinois facility in the year -- in current  
9 dollars and then escalated it to the year 2002,  
10 which was the assumption back when he did his  
11 estimate, and I believe he used a 5 percent  
12 escalation rate at that time.

13 Q. Okay. Now, Mr. Townsend asked you a  
14 question regarding if ComEd received something less  
15 than \$121 million, and you responded that if it is  
16 less, that it will put the Genco more at risk, that  
17 you would not recommend that ComEd transfer the  
18 stations, correct?

19 A. That's correct.

20 Q. Would your answer be the same if the \$121  
21 million is considered not to be justified by the  
22 evidence?

1       A.     Justified by whom?

2       Q.     By the Commission.

3               In other words, the \$121 million  
4 decommissioning cost estimate is determined by the  
5 Commission that it is too high, that it is some  
6 lower amount, would you still recommend that ComEd  
7 not transfer the stations?

8       A.     Yes.

9       Q.     And why is that?

10      A.     Because, I mean, the evidence is -- in this  
11 proceeding relies on estimates of future events  
12 occurring, and the risks associated with who is  
13 taking on the liability associated with that  
14 uncertainty. So I don't think the Commission or  
15 anyone else could determine with certainty what  
16 events will take place, so this is a business  
17 decision basically in terms of what additional  
18 business risks the Genco would take on and how those  
19 risks could be mitigated.

20              And one way to mitigate at least a  
21 portion of those risks is to add to the current  
22 decommissioning trusts, roughly \$720 million over

1 the next six years.

2 Q. So in your mind, no matter what the  
3 Commission, the fact finder finds, it is the  
4 appropriate amount of decommissioning, unless it is  
5 \$121 million, then it does not matter?

6 A. Well, I don't know what the company is going  
7 to do. I only know what I would advise the company,  
8 and we think the evidence is strong that the Genco  
9 is taking additional risks. And when you begin to  
10 whittle down the \$720 million --

11 JUDGE CASEY: Okay. Mr. Berdelle, I am going to  
12 cut you off there. I think everyone knows your  
13 position is if it was something less than \$121  
14 million you would not recommend to the Genco that it  
15 take the deal.

16 THE WITNESS: Right.

17 JUDGE CASEY: Next question.

18 BY MS. DOSS:

19 Q. Okay. Now, you are an accountant, correct?

20 A. Yes, I am.

21 Q. So you calculated the escalation rate  
22 low-level waste as an accountant?

1       A.     Yes.

2       Q.     And not as a low-level waste expert,  
3 correct?

4       A.     That's correct.

5       Q.     So you have no articles regarding low-level  
6 waste?

7       A.     I do not.

8       Q.     And have you ever worked with the Illinois  
9 Low-Level Waste Task Group?

10      A.     No.

11      JUDGE HILLIARD: We don't think that this line  
12 of questioning is relevant, who he knows. He is an  
13 accountant for the company, an officer of the  
14 company. That is it.

15      MS. DOSS: I just wanted to know to what extent  
16 he is purporting to calculate the escalation rate,  
17 so I won't go any further.

18      JUDGE CASEY: Mr. Berdelle, you have done this  
19 with an accounting background, not because of some  
20 low-level waste expertise.

21      THE WITNESS: Yes.

22      JUDGE CASEY: Okay. I think that is clear.



1 MS. DOSS: Okay. That is fine.

2 BY MS. DOSS:

3 Q. And, Mr. Berdelle, do you ever look into

4 low-level waste for other states?

5 A. Have I? No, I have not.

6 Q. As far as escalation rates?

7 A. No, I have not.

8 Q. So when you use the escalation rate, you are

9 simply using New Reg 1307, Revision 8, correct?

10 A. Well, I will have to stop you. Which

11 escalation rate are you talking about?

12 Q. Low-level waste?

13 A. No, I understand, but there is many

14 different escalation rates contained within my

15 testimony. Is it the 22.44 percent low-level waste

16 disposal escalation rate or the 7.48 percent.

17 Q. Well, you created so many escalation rates.

18 A. Sorry. The 22.44 percent escalation rate is

19 based upon New Reg 1307, Rev. 8, in accordance with

20 the Commission approved escalation formula. The

21 7.48 percent escalation rate was not.

22 Q. And then in 99-0115, did you use New Reg

1 1307, Revision 8, to calculate the escalation rate?

2 A. That was calculated. However, the overall  
3 escalation rate assumed a 10 percent low-level waste  
4 disposal escalation rate which was the Commission  
5 Staff's upper end of the collar that it proposed,  
6 and the company agreed with that in the context of  
7 Docket 99-0115 Rider 31 proceeding.

8 Q. But you did use New Reg 1307?

9 A. In determining the 22.44 percent, correct.

10 MS. DOSS: All right. Okay. No further  
11 questions, your Honor.

12 Your Honor, I would like to move for Cook  
13 County Cross Exhibit 2 into evidence.

14 JUDGE CASEY: County has moved to enter as an  
15 Exhibit Cross No. 24, the response to AG's data  
16 request. Is there any objection?

17 MR. ROGERS: No objection.

18 JUDGE CASEY: Okay. It will be admitted

19

20 (Whereupon, Cross

21 Exhibit No. 24 was

22 admitted into evidence.)

1 CROSS-EXAMINATION

2 BY

3 MR. WARREN:

4 Q. Okay. Good evening, Mr. Berdelle.

5 A. Hi, Mr. Warren.

6 Q. We will try to be brief, acknowledging the  
7 hour here, and a number of our questions have been  
8 asked.

9 I would like to refer you to Attachment B  
10 of the petition.

11 A. Which page?

12 Q. Page 1.

13 A. Okay.

14 Q. Okay. Now, this is a table that is showing  
15 the cost of service figures including  
16 non-radiological decommissioning costs; is that  
17 correct?

18 A. Yes.

19 Q. Now, according to this table, under Dresden  
20 1, the total cost of service for Dresden 1 would be  
21 \$28,179,000; is that correct?

22 A. That's correct.

1 Q. Okay. Now, that means that Dresden 1 then  
2 would be underfunded by that amount; is that  
3 correct? Is that what that table means?

4 A. Underfunded by that amount, I don't think  
5 that is what it is suggesting.

6 Q. Could you tell me what that figure then  
7 represents?

8 A. What that figure represents is the amount  
9 needed to be collected from ratepayers annually for  
10 six years that would result in a fully funded  
11 Dresden 1 trust coupled with the amortization of  
12 prior collections assuming all of the underlying  
13 assumptions that is contained with the company's  
14 proposal including the 4.11 percent escalation rate.

15 Q. So assuming all that, that number then  
16 represents what would be underfunded on a yearly  
17 basis for the six years that would have to be  
18 collected in order for it to be fully funded?

19 A. Correct.

20 Q. So then now if you look at Byron 1, for  
21 example, it says zero. So would it be safe for me  
22 to assume that there would -- under all of the

1 assumptions, the 4.11 percent and what have you that  
2 you are making on this table, that there is no --  
3 that it is fully funded, there is no collections  
4 required for Byron 1?

5 A. Again, if you were to assume all of the  
6 assumptions --

7 Q. Well, that is what we are doing. This is  
8 your attachment.

9 A. Right. That's correct.

10 Q. And the same would be for LaSalle 1, also  
11 Braidwood 1, it would be fully funded or there would  
12 be no more requirements for additions.

13 Now, assuming again all of your  
14 assumptions and everything made, could that also  
15 mean that for LaSalle 1, Byron 1, and Braidwood 1  
16 that it could be overfunded. We just don't know  
17 from this; is that correct?

18 There could be an excess at that point.  
19 The zero does not represent that there is only  
20 enough money required for full funding. There could  
21 be an excess?

22 A. That is true on the hypothetical that we are

1 using.

2 Q. Okay. Could we go to page 2 of your direct  
3 testimony. Now, you have indicated earlier that  
4 this approximately \$121 million you have -- in your  
5 response I think it was to  
6 Mr. Townsend, but there is no order in the '99 Rider  
7 31 docket that it is ordered this \$121 million  
8 dollars; is that correct?

9 A. That's correct.

10 Q. I want to refer you now to AG -- it is AG  
11 data request No. 3, item 21. It is a two -- it is a  
12 one-page document.

13 What are we up to for cross exhibit  
14 numbers?

15 JUDGE CASEY: This would be 25.

16 (Whereupon, Cross  
17 Exhibit No. 25 was  
18 marked for identification  
19 as of this date.)

20 BY MR. WARREN:

21 Q. Okay, what has been marked as People's Cross  
22 Exhibit 25, which is the response to Attorney

1 General Data Request No. 3, in particular AG No. 21  
2 of that request, are you familiar with this  
3 response?

4 A. Yes.

5 Q. Okay. Now, this indicates the amount of  
6 money that the Commission has authorized for  
7 decommissioning and expense between the years of  
8 1994 and the year 2000; is that correct?

9 A. That's correct.

10 Q. Okay. Now, it shows that in Docket 94-0065,  
11 the Commission authorized approximately \$118  
12 million?

13 A. Correct.

14 Q. And then in '96, in Docket 96-0113, the  
15 Commission authorized approximately \$108 million  
16 dollars. And then in Dockets 97-0110 and 98-0167,  
17 for each of those years, the Commission authorized  
18 approximately \$84 million; is that correct?

19 A. That's correct. My recollection is there  
20 was a '95 docket as well where the Commission  
21 authorized the same amount that it authorized in the  
22 '94 docket, but that was not contained in the

1 response.

2 Q. But in that regard or in that respect, this  
3 response is incomplete, there should have been a '95  
4 docket?

5 A. That is my recollection off the top of my  
6 head.

7 Q. That is all right. But it would have  
8 been --

9 A. Same amount as the '94 docket.

10 Q. The same amount as the '94 docket. Okay.

11 Wouldn't you agree, even including the  
12 '95, starting out with \$118 million in '94 and '95  
13 that in your response these -- the dockets indicate  
14 a downward trend from '94 --

15 A. Yeah.

16 Q. -- in what the Commission has authorized?

17 A. Right. That is true.

18 Q. Okay. Thank you?

19 A. But this has not been the company's position  
20 in each of these dockets.

21 Q. That was my next question and you  
22 anticipated.



1                   And those figures, those numbers  
2 represented less than what the company has asked for  
3 in each of those instances, correct?

4       A.    Absolutely.

5       Q.    Could you turn to page 3 of your direct  
6 testimony, please. And in particular, particularly  
7 I draw to your attention to lines 5 to 28 where you  
8 say that under the Public Utilities Act, ComEd's  
9 customers are obligated to pay the full of amount of  
10 this shortfall; is that correct?

11      A.    That's correct.

12      Q.    Could you please show us where in the act  
13 that it states that when nuclear plants are  
14 transferred to an owner that is not a public utility  
15 obligated to provide its power to Illinois customers  
16 over the full operating life of the plants, that  
17 those customers must still pay all decommissioning  
18 costs?

19      MR. ROGERS: I am going to object again to  
20 questions on legal issues. I think these were  
21 covered earlier.

22      MR. WARREN: I understand he is not a lawyer. I

1 am just saying if he knows where this -- he has made  
2 this statement as a non-lawyer. I just want to know  
3 if he knows as a non-lawyer where that obligation  
4 might be under the act.

5 JUDGE CASEY: I think Mr. Rogers is right.

6 But, Mr. Berdelle, if you know, say so.  
7 If you don't, say so.

8 THE WITNESS: I will answer it to the best of my  
9 knowledge, and the company's view is that in Section  
10 8-508 and the subparts that Mr. Robertson referred  
11 to, the act allows the collection of amounts that  
12 ComEd contracts with a third party for the  
13 satisfaction of the decommissioning liability.

14 BY MR. WARREN:

15 Q. So as far as you know, Section 508.C.iii,  
16 three little I's, is the authority to that Illinois  
17 payers --

18 A. There might be another authority, but that  
19 is the authority I am aware of.

20 Q. Let's go to page 6 of your direct testimony,  
21 if we could, and line 31 to 37.

22 You mention final reconciliation.

1 Whatever the money over this six-year period is,  
2 assuming that you get a six-year period for  
3 collections or whatever the length of that might be  
4 and whatever amount, that there will be a final  
5 reconciliation to, I guess, prove it up?

6 MR. ROGERS: I did not see that on those lines.  
7 I might be missing it.

8 JUDGE CASEY: I don't see the phrase or term  
9 final reconciliation.

10 BY MR. WARREN:

11 Q. It was probably on the rebuttal testimony.  
12 Anyway, you agree that you have testified that the  
13 collections in -- of these funds over the six-year  
14 period or whatever it is will be subject to a final  
15 reconciliation?

16 MR. ROGERS: So do you think it was page 6 of the  
17 rebuttal, were you saying? I just want to put it in  
18 front of him. It might make it easier to confirm  
19 what you are asking.

20 MR. WARREN: If we could have a minute, your  
21 Honor.

22 BY MR. WARREN:

1 Q. Okay. Let's go to page 3 of Exhibit 2. I  
2 know it was in various places throughout your  
3 testimony. I guess I wrote it down wrong.

4 On line 35 you refer -- you use the word  
5 subject to reconciliation. That is after the  
6 collections of 2006. You see where I am referring?

7 A. Yes.

8 Q. I just would like, for the record, what do  
9 you mean by final reconciliation?

10 A. I need to consult with the tariff that was  
11 proposed in this case, if you would just bear with  
12 me a minute.

13 Okay. The final reconciliation referred  
14 to on page 3 of my testimony referenced the initial  
15 tariff that the company filed in this proceeding  
16 that to the extent that it over collected the  
17 \$120.933 million or under-collected that amount over  
18 that six-year period, there would be a final true up  
19 of that over or undercollected amount.

20 Q. So if it is undercollected, then there would  
21 be an additional charge to Illinois ratepayers; is  
22 that correct?

1       A.     That is what I read in the initial tariff we  
2     filed in this proceeding.

3       Q.     And then can I assume that the converse is  
4     true, if it is overcollected because, you know,  
5     sales of kilowatt hours have just gone through the  
6     roof, that there will be some form of refund  
7     Illinois customers? That it would not go to the  
8     Genco, there would be a refund to all customers?

9       A.     That's correct.

10      MR. ROGERS: Just for clarity, I might mention  
11     that Mr. Berdelle was referring to Exhibit A to  
12     ComEd's petition in this proceeding.

13      MR. WARREN: To what?

14      MR. ROGERS: To Exhibit A to ComEd's petition in  
15     this proceeding. That is the tariff that he was  
16     reading from.

17     BY MR. WARREN:

18      Q.     Okay. Could we go back to Attachment B to  
19     the petition again please, to page 4.

20      A.     Yes.

21      Q.     In paragraph 8, I guess it is the second to  
22     last sentence of the paragraph. It says, ComEd will

1 be compensated for performing such collection  
2 service. Do you see that?

3 A. No. Refer to me what sentence are you  
4 looking at.

5 Q. Paragraph 8 on page 4, down at the bottom,  
6 the second to last sentence. Third line from the  
7 bottom.

8 A. I see it.

9 Q. Okay. How will ComEd be compensated?

10 A. I don't believe there was any compensation  
11 to ComEd contemplated in this proposal.

12 Q. No compensation?

13 A. (Shaking head.)

14 Q. What does this mean?

15 A. Well, I guess to the extent that ComEd  
16 desired to be compensated for as a collector of  
17 these moneys, that the -- this would provide for it,  
18 but that is not the company's proposal in this  
19 proceeding.

20 Q. You mean it is -- well, it is the company's  
21 proposal in this proceeding because we are reading  
22 from your attachment to the petition.

1                   But are you saying that you don't intend  
2 to ask Genco to pay you any money? Is that what you  
3 are saying?

4       A.    That -- ComEd has the right to ask Genco to  
5 pay moneys, but the -- at this point it is not  
6 contemplated that ComEd will.

7       Q.    Okay. It is true, isn't it, that the  
8 decommissioning fees that ComEd will collect,  
9 assuming the Commission allows them to collect  
10 anything for the six-year period, that is to be  
11 transferred over to the Genco on a yearly basis?

12      A.    Correct.

13      Q.    Before though -- and, of course, now those  
14 fees are going to be collected monthly,  
15 approximately monthly as somebody's electric bill  
16 becomes due because it is part of the kilowatt  
17 usage. It is a fee that is associated with  
18 the --

19      A.    It is a tariff.

20      Q.    Correct. Will that money be deposited in  
21 any kind of interest bearing account?

22      A.    It will deposited in the trust which earn

1 returns over time, as assumed in this proposal, 7.36  
2 percent on an after tax basis.

3 Q. Will the ratepayers receive any refunds from  
4 the interest that is paid on those -- you know, from  
5 that interest bearing account?

6 A. No. Those are the moneys that are included  
7 in the trust that are factored into the overall  
8 proposal here, and that is why the company believes  
9 that it can limit its collections from ratepayers to  
10 \$121 million for six years because it has the  
11 benefit of earning on those funds over a period of  
12 time.

13 Q. Okay. The trust that you were referring to  
14 that this money that you collect goes into, that is  
15 a ComEd trust, I assume, right?

16 A. No. That would be a Genco trust, so ComEd  
17 would remit the moneys to the Genco and Genco would  
18 deposit those moneys in certain decommissioning  
19 trusts.

20 Q. I guess I was not clear originally.

21 JUDGE CASEY: I am not clear either. So then the  
22 Genco gets paid on a monthly basis, not an annual



1 basis?

2 MR. WARREN: That is exactly what it was.

3 BY MR. WARREN:

4 Q. I thought you said that you were going to  
5 transfer the money to Genco on an annual basis, so  
6 during that annual period where you are holding the  
7 money, ComEd is holding it in their hands, so to  
8 speak, before they put in Genco's hand once a year.

9 My question was, while ComEd is holding  
10 it, are they putting it in any kind of interest  
11 bearing account?

12 A. I am not certain that it is the company's  
13 proposal to contribute these moneys to Genco on an  
14 annual basis. I would think that the company would  
15 contribute these moneys on a periodic basis. I  
16 don't know if that means monthly, but if it is not  
17 monthly, the question, I guess, is will the interest  
18 that ComEd earns for those month or two period of  
19 time that it holds the money, will it refund that  
20 interest to ratepayers.

21 Q. What is going to happen to that money? Will  
22 it refund it to ratepayers?

1       A.    I would think that to the extent that that  
2 remittance occurs over a period longer than a month,  
3 you know, that would -- that cost of money or the  
4 benefit associated with those funds would be used in  
5 the determination of rates whenever rates are set.  
6 Rates are set -- will be set beginning in the year  
7 2005.

8       Q.    Okay.  So it will be used for the benefit of  
9 ratepayers, as opposed to go over to the Genco?

10      A.    Yeah.  To the extent that that interest  
11 defrays the need for ComEd to do other financing,  
12 then, yes, that would be factored into the overall  
13 rate base at that time.

14      Q.    I would like to now refer to you the  
15 response to Attorney General's first set of data  
16 requests, specifically AG No. 4.  And for  
17 identification purposes it will be marked as  
18 People's Cross -- what number are we up to?

19      JUDGE CASEY:  AG Cross No. 26.

20      BY MR. WARREN:

21      Q.    Do you have that in front of you?

22      A.    I do.

1 Q. Are you familiar with this document?

2 A. I think we went over this document with Mr.  
3 Townsend or Mr. Robertson. I can't recall which.

4 Q. Okay. Well, if it is already in evidence, I  
5 did not recall anybody bringing this into evidence.

6 JUDGE HILLIARD: He discussed it with him, but he  
7 did not attempt to enter it into evidence.

8 BY MR. WARREN:

9 Q. Okay. Could you explain, please, what these  
10 charts represent?

11 A. They represent the formula and calculations  
12 used to generate the \$120.933 million cost of  
13 service or amount of money that the company is  
14 proposing in this proceeding.

15 Q. Could we turn to the page that discusses the  
16 Byron plants, and it is the second to the last one.

17 A. Okay.

18 Q. You notice under the disbursements column  
19 for Byron 1, looking at the figure that is there  
20 for -- rate at the very bottom for the year 2035?

21 A. Yes.

22 Q. And that figure is \$267 plus million; is

1 that correct?

2 A. That's correct.

3 Q. And it shows a disbursement. Do you know  
4 what that disbursement is, why that is such a large  
5 disbursement there?

6 A. Yeah. That represents the balance in the  
7 trust funds if one were to assume the unrealistic  
8 assumption that low level -- or overall escalation  
9 of decommissioning grows at 4.11 percent.

10 And let me explain that. Because of the  
11 use of the 4.11 percent -- well, let me back up.

12 Because of the \$120 million proposal that  
13 the company made in this proceeding, that implicitly  
14 calculates to a 4.11 percent escalation rate which  
15 reflects the risks associated with the company's  
16 proposal. By then using that escalation rate in  
17 each one of these individual trusts, there were  
18 three trusts,

19 Byron 1, Braidwood 1, and LaSalle 1 that had more  
20 than sufficient funds, assuming that unrealistic  
21 escalation rate. And so that last amount would  
22 represent distributions that would go back to

1 ratepayers or be used in other trusts to fund  
2 decommissioning at those trusts.

3 Q. And then, you know, regardless of your  
4 characterization as unrealistic, if that escalation  
5 rate was achieved, then there would, in fact, be an  
6 excess in the funds at least for the Byron and  
7 whichever other one in this grouping of documents  
8 that it lists?

9 A. And all other assumptions were held actual.

10 Q. Your assumptions in your petition.

11 MR. WARREN: I have no further questions, your  
12 Honor. At this point I would like to move for  
13 admission of AG 25 and 26. Is that the numbers?

14 JUDGE CASEY: That's correct. Any objection?  
15 Okay. Attorney General Cross Exhibits 25 and 26  
16 will be admitted.

17 (Whereupon, Cross  
18 Exhibit Nos. 25 and 26 were  
19 admitted into evidence.)

20 JUDGE CASEY: Any other cross?

21 MR. ROSENBLUM: Yes.

22

1 CROSS -EXAMINATION

2 BY

3 MR. ROSENBLUM:

4 Q. Good evening, Mr. Berdelle. My name is Dan  
5 Rosenblum for the Environmental Law & Policy Center.

6 A. Good evening, Mr. Rosenblum.

7 Q. And I know it is late, I think I can be very  
8 quick. Good news.

9 I want to turn to page 16 of Exhibit 8,  
10 the paragraph 1 beginning on line 36. Are you  
11 there?

12 A. Yes.

13 Q. Okay. I just want to walk through this, and  
14 I want to make sure I understand and want to clarify  
15 the record.

16 A. Okay.

17 Q. First of all, we don't know which ComEd  
18 plant will be decommissioned first, correct?

19 A. Correct.

20 Q. There is no way we could. Nor do we know  
21 when the first plant will be decommissioned,  
22 correct?

1       A.     Correct.

2       Q.     The assumption in your paragraph 1 here is  
3     that some of the plants may well be underfunded at  
4     the time of decommissioning; is that correct?

5       A.     That's correct.

6       Q.     Now, let's just assume now for the purposes  
7     of this question that the first plant to be  
8     decommissioned is underfunded.

9       A.     Okay.

10      Q.     If there are not sufficient funds for  
11     radiological decommissioning, what happens then ,  
12     Genco finds the money?

13      A.     Genco would supplement the decommissioning,  
14     that's correct.

15      Q.     Now, what happens if there is not sufficient  
16     funding for the non-radiological decommissioning?  
17     Would the site restoration non-radiological  
18     decommissioning be done?

19      A.     It is impossible for me to answer that.  
20     What our proposal is , is that the Genco will commit  
21     to do the non-radiological decommissioning to the  
22     extent funds exist.

1                   But under your premise, the funds don't  
2 exist, and it is impossible for me to sit here today  
3 and say that it would or would not perform  
4 non-radiological decommissioning. It would depend  
5 on the facts and circumstances that exist at that  
6 time.

7       Q.    So if by chance the first plant happens to  
8 be one that is underfunded, you would have no  
9 commitment that site restoration will be done for  
10 that plant?

11      A.    There is no commitment if there is  
12 insufficient funds, that's correct.

13      Q.    And have you considered trying to obligate  
14 Genco by contract to do that?

15      A.    We have considered it and rejected it.

16      Q.    Why was that rejected?

17      A.    Because of the -- you know, it is difficult  
18 to obligate a firm for a liability that is -- we  
19 don't know at this point whether there will be  
20 funding for that obligation, and so to the extent  
21 that there is money that is set aside for that  
22 obligation, there will be a commitment. But to the



1 extent that there is not money set aside to satisfy  
2 that obligation, it is difficult to obligate Genco  
3 to do something when it does not have the money.

4 Q. Did you consider any type of mechanism to  
5 try to borrow against the excess funds in other  
6 decommissioning trusts?

7 A. Well, that -- and we are talking about the  
8 first plant?

9 Q. If you are doing the first and you know that  
10 the second, third, and fourth have excess funds.  
11 Have you considered the mechanism to borrow against  
12 those excess funds?

13 A. I am not sure that Genco could borrow  
14 against excess funds. I mean, the law prescribes  
15 that those funds should be used solely for the  
16 purposes of decommissioning those units.

17 However, if we did consider a proposal  
18 such that Genco would pay for decommissioning and  
19 then to the extent that other funds were -- had  
20 excess funds, it could get reimbursed for that  
21 payment.

22 Q. That is really what I was thinking of. Is

1 that an approach that you would support?

2 A. We would consider it, but it is not part of  
3 our proposal here.

4 Q. You are not willing to commit to that?

5 A. Not at this point.

6 MR. ROSENBLUM: I have no more questions. Thank  
7 you.

8 MR. REVETHIS: I just have one or two questions.  
9 Everything has really been covered for our concern.

10 CROSS-EXAMINATION

11 BY

12 MR. REVETHIS:

13 Q. Good evening, Mr. Berdelle.

14 A. Mr. Revethis, good evening.

15 Q. First of all, Mr. Townsend and  
16 Mr. Robertson have adequately explored areas of  
17 concern that the Staff has had, and I will not be  
18 redundant.

19 Although, there was just one inquiry that  
20 has been actually visited twice, and I just wanted  
21 to be clear.

22 First of all, just by way of foundation

1 at page 11 of your direct testimony, lines 13  
2 through 16, you state in the event that this  
3 petition is granted and the merger and transfer of  
4 assets to the Genco take place, that ComEd will  
5 withdraw its petition filed in both the '99 and 2000  
6 decommissioning cases, correct?

7 A. The Rider 31 cases, that's correct.

8 Q. And then I believe Mr. Townsend earlier  
9 asked you if the transaction would still go through  
10 if something less than \$120,933,000 per year for the  
11 six-year period, were something less than that was  
12 ruled upon by the Commission. And I believe you  
13 stated -- and, you know, I will accept -- and  
14 correct me if I am mischaracterizing your testimony,  
15 that you certainly, you would not suggest that they  
16 take less than what you have put forward in your  
17 testimony, the \$120,933,000, but you were not  
18 certain what the company would do; is that correct?

19 A. That's correct.

20 Q. Okay. Then what I want to ask you actually  
21 is, if the Commission did, in fact, accept Mr.  
22 Riley's, position, Mr. Riley's proposal in this

1 proceeding verbatim, as it is as it stands out  
2 there, the four years at the amount that he states,  
3 I understand that you will not recommend that? That  
4 is your testimony, isn't it?

5 A. Yes, it is.

6 Q. Okay. Let me ask you, has your company  
7 given you authority to state here in this proceeding  
8 that they will not accept Mr. Riley's proposal,  
9 that, in fact, they will not go through with this  
10 transaction if Mr. Riley's proposal is, in fact,  
11 adopted in this proceeding?

12 A. Yes. I have been given authority to reject  
13 Mr. Riley's proposal.

14 Q. Well, you are rejecting it, but you don't  
15 know whether the company ultimately would or not; is  
16 that correct?

17 A. No, I do know. The company will not accept  
18 Mr. Riley's proposal.

19 Q. But do you know that the company would not  
20 go through with the transaction if something between  
21 what you are proposing and what Mr. Riley is  
22 proposing is, in fact, ordered by this Commission?

1       A.     That is correct.  I don't know the company's  
2 position in that case.

3       MR. REVETHIS:  Okay.  Thank you, sir.  I have  
4 nothing further.

5       THE WITNESS:  Thank you.

6                   EXAMINATION

7                   BY

8                   JUDGE HILLIARD:

9       Q.     Mr. Berdelle, on page 13 of your rebuttal  
10 testimony, there is a question and answer that goes  
11 from line 23 to line 40.

12      A.     Yes.

13      Q.     Concerning this part of Mr. Riley's  
14 proposal, could you explain your answer there.  I  
15 don't understand it.

16      A.     Yes.  Mr. Riley's position in the '99  
17 proceeding was that the Commission should not  
18 provide recovery of costs that were generated by the  
19 DOE's delay in picking up spent fuel.  The DOE was  
20 obligated by contract, at least it is our position  
21 the DOE he was obligated by contract to begin  
22 picking up spent fuel in 1998, and now the DOE has

1 publicly stated that period is delayed to at least  
2 2010.

3           Mr. Riley's position in the '99 case is  
4 the Commission should not authorize recovery of any  
5 costs due to the DOE delay. And it was mainly  
6 directed to the Zion station where the company was  
7 proposing to recover certain costs related to  
8 storing spent fuel in the spent fuel pool between  
9 2000 and 2013 when the decommissioning of Zion  
10 station began or will begin.

11           The company has performed calculations.  
12 Because it is a large nuclear utility, it has  
13 performed optimization calculation that allow it to  
14 build dry storage facilities at some of its older  
15 plants, namely Dresden and Quad Cities. And even  
16 though some of its newer plants such as LaSalle,  
17 Byron, and Braidwood will run out of space in the  
18 fuel pool, the optimization analysis allows the  
19 newer plants to use the cue space, the DOE cue space  
20 for the older plants. Because of Mr. Riley's  
21 position here, we reran the optimization study and  
22 re-cash flowed Zion station because Mr. Riley asked

1 us to assume that the DOE begins picking up fuel in  
2 1998. So what that meant is that we accelerated the  
3 decommissioning process of Zion, and so cash flows  
4 actually would occur sooner than what our proposal  
5 was, which actually, although it reduces the total  
6 cost of decommissioning Zion station, on a present  
7 value cost of service basis it actually increases  
8 cost of service by about \$900,000 a year.

9 Q. In the absence of this sale that was being  
10 contemplated in this docket here, would  
11 the -- assuming that there is money left over in  
12 some of these trust funds, would the refunds be made  
13 on a site specific basis as each plant finished  
14 being decommissioned?

15 A. Well, I think it is the company's modified  
16 proposal --

17 Q. No. I'm saying in the absence of this deal  
18 going through, will that happen.

19 A. I'm sorry. I believe so. To the extent  
20 that the liability is fully satisfied, the  
21 decommissioning liability is fully satisfied and  
22 there was money left over, then those moneys would

1 then be refunded to ratepayers at that time.

2 Q. And assuming that there were no extensions  
3 on any of the plants, when is it likely that the  
4 first -- and assuming there were money in each one  
5 of these funds when the decommissioning were  
6 completed, when would possibly the first refund be  
7 made to ratepayers?

8 A. Off the top of my head, I would say  
9 somewhere in the 2025 to 2030 time frame.

10 Q. And if all of the plants lives were extended  
11 for the maximum amount, the first refund would be an  
12 additional 20 years?

13 A. Yes.

14 Q. Okay.

15 A. Well, to the extent that they lasted the  
16 full 20 years, right.

17 Q. I have a hypothetical here.

18 If you assume that the number of  
19 customers that ComEd is serving in 2005 and 2006  
20 were the same as today and assuming that  
21 transmission constraints and the lack of ComEd --  
22 non-ComEd affiliated plants in the ComEd service



1 area dictate that the nuclear plants must run in  
2 order for all retail load to be served. Okay?

3 A. Okay.

4 Q. If the above holds, will ComEd and other  
5 suppliers be forced to purchase power and energy  
6 from Genco or do you know?

7 A. I don't believe so. I believe that the  
8 physical location of the nuclear plants as well as  
9 the physical location of the fossil plants, albeit  
10 that they are sold to Edison Mission Energy, does  
11 not require that ComEd purchase energy from the  
12 Genco because the physical location of these plants  
13 tend to mitigate the transmission constraints that  
14 you assumed in your hypothetical.

15 Q. Okay. I am not sure if this -- if you have  
16 answered this already.

17 If no other suppliers can physically  
18 locate a plant in the area or physically deliver the  
19 amount over the transmission grid, what prevents  
20 Genco from increasing its prices?

21 A. Could you repeat the question.

22 Q. If no other suppliers are physically able to

1 locate a plant in the area or to deliver the amount  
2 needed over the transmission grid, is there any  
3 reason why Genco would not, in effect, control the  
4 market?

5 A. I don't think Genco could control the  
6 market, and the FERC has determined that Genco would  
7 not control the market. Because the energy resides  
8 in northern Illinois, so ComEd could contract with a  
9 third party outside of northern Illinois at a market  
10 price. Genco could contract with someone outside  
11 the service territory at a market price, but because  
12 the physical electrons reside in northern Illinois,  
13 you know, the energy just flows to the source that  
14 is demanding that energy, which is likely northern  
15 Illinois and the surrounding region. So I don't  
16 think there would be a market power type of  
17 situation that I think your question is getting at.

18 Q. Okay. Does ComEd need approval from FERC  
19 for the PPA?

20 A. I believe ComEd has received approval of the  
21 PPA from the FERC.

22 Q. As part of the application approval proces s,

1 did ComEd receive authority to establish wholesale  
2 rates on a market negotiated basis?

3 A. As part of this transaction?

4 Q. No. As a part of the FERC application.

5 A. I think ComEd already has market -based rate  
6 authority from the FERC.

7 Q. Okay. Does ComEd currently have market base  
8 authority to serve wholesale customers such as  
9 Batavia, Naperville, St. Charles, Rock Falls,  
10 Rochelle?

11 A. I know those municipalities have fixed  
12 contracts, so if ComEd does have market -based  
13 authority from the FERC, it is not using that right  
14 now. But I don't know the answer to your question.

15 Q. Do you know if FERC has market power  
16 concerns regarding ComEd's service area?

17 A. It has -- the FERC has reviewed ComEd's  
18 application and reviewed the market power and  
19 performed a market power analysis, and it has no  
20 concerns about market power in ComEd's territory.

21 Q. Has ComEd applied for a waiver of FERC's  
22 inner ability of power sales pricing limitations and

1 code of conduct rules, including the affiliate power  
2 brokering rules?

3 A. I don't know.

4 Q. How likely do you think it is that the rates  
5 between ComEd and Genco will be passed on to retail  
6 customers?

7 A. I think it is unlikely that rates between  
8 Genco and ComEd would be passed on to retail  
9 customers prior to the end of 2004. After 2004, to  
10 the extent that ComEd negotiates a market price for  
11 the nuclear energy with Genco, I would fully expect  
12 that the Commission would authorize the recovery of  
13 those rates from ratepayers.

14 Q. Is it your opinion that the plants that are  
15 the subject of this docket must run to serve the  
16 retail load in the ComEd service area?

17 A. I don't think these are must-run plants. I  
18 mean, economically if they are available to run,  
19 they do not because of economics, but the must-run  
20 definition that I am vaguely familiar with is more  
21 of a reliability requirements. And these plants are  
22 not must run from a reliability standpoint.

1 Q. And do you anticipate the situation to be  
2 the same in 2005 and 2006?

3 A. Yes.

4 Q. Do you know if Amergen provides  
5 decommissioning services?

6 A. I don't believe they do.

7 Q. Does the company -- does ComEd have any  
8 plans to initiate a subsidiary for decommission?

9 A. No, the company has no plans to do that.

10 Q. Is there anything in the agreement submitted  
11 to the Commission which would prevent Genco from  
12 contracting away any surpluses in the  
13 decommissioning funds to a subsidiary it creates?

14 A. Contracting away decommissioning funds you  
15 said?

16 Q. Assume for the purposes of the question that  
17 there are surpluses in the decommissioning or  
18 potential surpluses in decommissioning funds, more  
19 than enough to perform radiological and  
20 non-radiological decommissioning.

21 Is there anything in the documentation  
22 submitted to the Commission which would prevent

1 Genco from creating a subsidiary with whom it could  
2 contract to perform these services at, say, above  
3 market rates and exhaust the moneys to prevent any  
4 refund from ever taking place?

5 A. No. But I think the Genco is governed under  
6 the PUHCA, the FCC PUHCA rules, and so PUHCA  
7 requires that Genco only deal with an affiliate at  
8 cost, which does not include a rate of return except  
9 for direct interest costs.

10 Q. PUHCA stands for what?

11 A. The Pub Utility Holding Company Act of 1935.

12 Q. What is your own estimates of the  
13 appropriate escalation rate that ought to be in  
14 place here?

15 A. That ought to be in place?

16 Q. Yeah.

17 A. Well, again, this is a proposal forevermore,  
18 I believe that the 7.81 percent is the most  
19 realistic escalation rate because it is based upon  
20 historical escalation and low-level waste disposal,  
21 but it projects out over ten years the escalation in  
22 labor and other type costs.

1                   So given the nature of the proposal here,  
2   that is the most realistic escalation rate that one  
3   could assume.

4       Q.   In response to one of Mr. Robertson's  
5   questions, you indicated that -- something to the  
6   effect, at least I understand it to be this, that if  
7   the numbers in your proposal worked out, that there  
8   would not be a shortfall in the decommissioning  
9   funds; is that correct?

10      A.   I'm sorry. I am not sure I recall that  
11   diatribe with Mr. Robertson.

12      Q.   Is it your testimony that if the numbers and  
13   the proposal made to the Commission in this  
14   proceeding are accurate, there will be no shortfall?

15      A.   That's correct. But it is also my testimony  
16   that it is unlikely that the assumptions contained  
17   in this proceeding will turn out to be true. In  
18   other words, it is our -- it is the company's  
19   position that there will likely be a shortfall in  
20   the trust.

21      Q.   In the proposal there is language to the  
22   effect that this proceeding, if it were accepted by

1 the Commission, would save ratepayers  
2 \$1 billion. Is that nominal dollars or today's  
3 dollar?

4 A. That would be in nominal dollars, what  
5 customers would pay.

6 Q. So if the numbers in your proposal are  
7 accurate or if things work out according to the  
8 proposal, where does that money come from? How does  
9 it exist?

10 A. Well, if there was a \$1 billion shortfall,  
11 Genco would periodically, as its filing with the  
12 NRC, its annual calculation in accordance with 10  
13 CFR 50.75, Genco would need to periodically  
14 supplement the deposits into the trusts to make up  
15 for whatever any shortfall exists at that time.

16 JUDGE CASEY: That may be the case, but where is  
17 the billion dollars? If in the petition or the  
18 original pleadings there was going to be a billion  
19 dollars savings, and Mr. Hilliard's hypothetical,  
20 let's say everything comes to fruition, the 4.11 is  
21 used, you get the \$121 million a year.

22 If that is going to be enough to fund the



1 trust fully, where is the billion dollars of savings  
2 to the ratepayer?

3 THE WITNESS: Well, in that scenario, then, the  
4 billion dollar savings -- well, I guess you are  
5 asking the question as it relates to what Genco  
6 would be funding, is how I understood the question.

7 JUDGE CASEY: Right.

8 THE WITNESS: And Genco -- assuming the  
9 hypothetical that all of those assumptions were --  
10 turned out to be actually true, then Genco would not  
11 have to supplement the trust and would not need to  
12 pay that billion dollars.

13 But the situation here is, we don't know,  
14 you know, whether those assumptions are going to be  
15 held true or not, and the weight of the evidence  
16 would suggest, from a non-attorney again, that there  
17 is substantial risk that that billion dollars is a  
18 real number and Genco will have to make those  
19 contributions to the trust.

20 BY JUDGE HILLIARD:

21 Q. With regard to the purchase of power from  
22 Genco in 2005 and 2006 --

1       A.    Yes.

2       Q.    -- if there are other energy providers  
3 capable of servicing ComEd's customers' needs -- I  
4 think you have indicated that there are such  
5 entities?

6       A.    Yes.

7       Q.    How does it advantage ComEd's customers for  
8 ComEd to enter into a power purchase agreement with  
9 Genco in 2005 and 2006 which will require them to  
10 pay the additional \$121 million?

11      A.    Because ComEd would be contracting for the  
12 nuclear power out of this Genco. Nuclear power is  
13 energy that is cheaper to produce than, you know,  
14 gas or oil or coal-fired energy and likely would  
15 command a more favorable market price than  
16 coal-fired energy or gas or oil-fired energy. So  
17 the PPA, as structured, was structured to be  
18 favorable to ComEd customers to give them the right  
19 to the more inexpensive nuclear energy that Genco  
20 would have and only by the energy that Genco  
21 produces.

22                   In other words, if there is a plant that

1 is down for a period of time, ComEd would not be  
2 obligated to pay for the costs associated with  
3 bringing the plant back on line. Rather, it would  
4 only have to pay the cost of energy it purchases.

5 Q. Isn't it only advantageous to ComEd's  
6 customers to -- for ComEd to meet its power  
7 requirements from Genco if the spread between the  
8 market and the price you can get from Genco is \$121  
9 million a year?

10 A. I mean, not necessarily. I don't know what  
11 the market price of energy is going to be in those  
12 years.

13 I mean, if -- the capacity of the nuclear  
14 plants is 9,400 megawatts. This summer ComEd's  
15 customers demanded 20,200 megawatts, so it is very  
16 likely that even if ComEd loses a substantial amount  
17 of its loads, it would still continue to need 9,400  
18 megawatts of around-the-clock energy. So ComEd  
19 ratepayers are put in a favorable position as a  
20 result of this contract.

21 Now, if ComEd was able to -- if ComEd  
22 lost all its customers. Okay? And did not need

1 that 9,400 megawatts of capacity, I don't see the  
2 need to renew that contract, and it would unlikely  
3 be a favorable contract for ComEd and the Commission  
4 would then determine in whatever rate proceeding  
5 that existed at that point in time that ComEd was  
6 unreasonable in opting for the remaining two years  
7 of that contract.

8           So it is hard for me to say today  
9 whether, you know, it will be reasonable to purchase  
10 all of that energy. As I sit here today, I think it  
11 will be, and it has been the company's position that  
12 we fully expect to enter into an agreement for those  
13 last two years because we don't think we will lose  
14 100 percent of our customers.

15       Q. Do you agree or not agree that unless the  
16 spread is \$121 million that the company ought to buy  
17 the power somewhere else?

18       A. I think the company should buy the power  
19 from the Genco if it is at a market price. Okay?  
20 And that market price from the Genco for that  
21 nuclear energy likely will be less than other prices  
22 because it is nuclear energy and it is around the

1 clock.

2                   Whether it -- you know, the spread has to  
3 be \$120 million, I can't say. I don't know.

4                   EXAMINATION

5                   BY

6                   JUDGE CASEY:

7       Q.    I just have a few questions, Mr. Berdelle.

8                   Mr. Rosenblum had asked you regarding --  
9 had a hypothetical where there was a shortfall in  
10 the very first plant to be decommissioned, and I was  
11 not clear -- I did not have a clear understanding of  
12 the answer with respect to the Genco making or  
13 contributing to take those decommissioning expenses.

14                  Under the current proposal, does Genco  
15 get paid back from other trusts, or is that just an  
16 expense that they have to eat?

17       A.    The -- that was not a part of the current  
18 proposal, but that is something the company has and  
19 would consider.

20       Q.    That they would eat it or that they would  
21 seek reimbursement from a different trust?

22       A.    They would go ahead and expend those moneys

1 even though it would be out of the Genco pockets if  
2 it could get reimbursed for those expenses out of a  
3 trust that may be overfunded in the future.

4 Q. Okay. The other area was regarding the  
5 monthly payments made by ratepayers to ComEd, and I  
6 was not clear as to the state of the proposal.

7 Are those monthly payments turned over to  
8 the trust immediately, or are they held by ComEd and  
9 then paid out at some time longer than the monthly  
10 payment? Do you know?

11 A. You know, I don't know if we have gotten  
12 that specific in our proposal. We may have. I just  
13 don't know, but --

14 Q. You don't. That is fine.

15 A. I don't know.

16 Q. The last thing is, it is not necessarily  
17 anything to do with decommissioning, but there was  
18 some -- one of the benefits that this proposal would  
19 bring to the Genco was that they would have some  
20 flexibility in the type of investments that the  
21 trust could enter into. And one of those areas, you  
22 indicated before, was the international market?

1       A.    Right.

2       Q.    And you had made statements basically on the  
3 diversification into that international market could  
4 decrease risk and yet increase the rate of return?

5       A.    Right.

6       Q.    You were then asked whether or not if this  
7 petition can go forward or was rejected, whether or  
8 not ComEd would seek the ability to have trust funds  
9 invest in the international market, and you  
10 indicated no.

11               Is that what the company's position is,  
12 that they don't intend to --

13       A.    Well, and I appreciate you following up on  
14 that question because I did want to elaborate on the  
15 answer.

16               The decommissioning investment, as viewed  
17 by the company, is somewhat asymmetric in its risk  
18 profile.  If the company is deemed to be imprudent  
19 in its investment of nuclear decommissioning trusts,  
20 the Commission has within its authority to declare  
21 that investment to be unreasonable and order some  
22 refunds in some fashion.  That has never happened,

1 but that eventuality or that scenario exists. It  
2 could happen.

3           And so the company has been somewhat on  
4 the conservative side in its investment, not overly  
5 conservative, but, actually, ComEd has been more  
6 aggressive than most utilities in how it invests its  
7 money and has done very well over the bull market of  
8 the 1990s. But would ComEd in and of itself, if  
9 this petition did not go forward, get more  
10 aggressive in its investments and trust funds, that  
11 is very unlikely because of the asymmetric risk  
12 associated with regulation.

13       JUDGE CASEY: I don't have anything further. Mr.  
14 Rogers, do you have any redirect? And do you need  
15 some time?

16       MR. ROGERS: Well, I think we have some  
17 confidential recross for tomorrow.

18       JUDGE CASEY: Yes. But instead of carrying over  
19 all of the redirect until tomorrow, we are here. We  
20 are going to do it tonight.

21       MR. ROGERS: Well, I might just very briefly.

22       JUDGE CASEY: Would you like some time?



1 MR. ROGERS: No. That is all right.

2 REDIRECT EXAMINATION

3 BY

4 MR. ROGERS:

5 Q. There were some questions that  
6 Mr. Townsend asked you, Mr. Berdelle, about what  
7 agreements would contain the undertakings that were  
8 part of the company's new proposal, and you referred  
9 to entering into an agreement with the Genco.

10 And my question was on -- in your  
11 rebuttal testimony on page 16, there is a reference  
12 at lines 32 to some provisions that would be  
13 included in trust agreements.

14 Is that how the company would propose to  
15 implement these?

16 A. That's correct. The company would, in  
17 response to Mr. Townsend's question, the company  
18 would, in effect, bind the Commission to perform  
19 decommissioning, both radiological and  
20 non-radiological, to the extent funds exist, through  
21 the trust agreements that will be created if this  
22 petition is approved.

1       Q.    All right.  I think also in response to Mr.  
2 Townsend's questions at one point there had been  
3 some reference to the difference in funding levels  
4 required by the ICC as opposed to those required by  
5 the NRC, and I think you said at some time something  
6 to the effect that the ICC requires more than the  
7 NRC.

8                Would you elaborate on that disparity in  
9 requirements?

10      A.    Yeah.  The ICC does not necessarily require  
11 more.  I somewhat misspoke in response to that  
12 question.

13               The ICC has approved certain levels of  
14 funding that the company has proposed based upon  
15 site specific cost estimates prepared by TLG and  
16 even prior consultants prior to '96.  In some cases,  
17 the ICC has approved funding greater than the NRC  
18 minimum, and in other cases it has approved cases  
19 less than the NRC minimum, so it is not -- the ICC  
20 approves the company's proposal and makes  
21 adjustments to that proposal accordingly.

22      Q.    There was some reference to Attachment B to

1 the petition and your testimony which showed some  
2 zeroes by Byron, Braidwood, and LaSalle, and there  
3 was some reference to your assumptions and whether  
4 you accepted those assumptions, then did that mean  
5 that those trusts did not require more money.

6           Were those questions all referring to the  
7 assumption that the cost escalation rate overall  
8 would be 4.11 percent?

9       A.   Those numbers assumed that the 4.11 percent  
10 escalation rate would come true, but my response is  
11 that a much higher escalation rate is the more  
12 appropriate rate. And in that case, Byron, LaSalle,  
13 and Braidwood would not have overfunded trusts at  
14 the end of the decommissioning process but would  
15 have likely underfunded trusts if that higher  
16 escalation rate came about.

17       Q.   All right. And there was also, in response  
18 to the Hearing Examiner's questions, some reference  
19 to the \$1 billion savings and where it is under  
20 various assumptions, and I think that you answered  
21 that if you assumed a 4.11 percent overall  
22 escalation rate and no adverse circumstances of the

1 type described in Mr. Speck's testimony and  
2 elsewhere in ComEd's testimony that occurred, that  
3 under those circumstances, there would not be a need  
4 for an additional \$1 billion of contributions; is  
5 that right?

6 A. That's right.

7 Q. But the \$1 billion of additional  
8 contributions that would be required, in your  
9 testimony you indicated was as compared with the  
10 contributions that would not be required under the  
11 assumptions used in the 1999 proceeding; is that  
12 right?

13 A. That's correct.

14 Q. And what overall cost escalation rate was  
15 assumed in 1999 proceeding?

16 A. The overall escalation rate in the '99  
17 proceeding was 4.738 percent.

18 Q. All right. And you have indicated that in  
19 the context of having the ability to return each  
20 year to the Commission if that turns out to be  
21 wrong, the company was willing to accept that 4.73  
22 rate; is that right?

1       A.     That's correct.

2       Q.     If the cost escalation turned out instead to  
3     be the amount supported by the Commission's formula  
4     which you said was 7.81, would the shortfall that  
5     Genco would have to fund be \$1 billion?

6       A.     No.   It would be substantially greater than  
7     \$1 billion.

8       MR. ROGERS:   Okay.   No more redirect.

9       JUDGE HILLIARD:   Just one thing.   Back to my  
10    question about being the a subsidiary for   the  
11    decommission.

12                Would Amergen at some point, if it was a  
13    subsidiary that was in the decommissioning business,  
14    would PUHCA rules or anything else prevent Genco  
15    from dealing with them.

16       A.     Yes, because they would be viewed, Amergen  
17    would be viewed as an affiliate under the PUHCA  
18    rules.

19

20

21

22

1 (Change of reporters.)

2 JUDGE CASEY: Is there any other recross based on  
3 those -- Mr. Robertson.

4 MR. ROBERTSON: I'll try this just one question.  
5 Can you hear me all right, Mr. Berdelle?

6 THE WITNESS: Yes, I can.

7 RECROSS -EXAMINATION

8 BY

9 MR. ROBERTSON:

10 Q. At Page 16, Exhibit 8, your rebuttal  
11 testimony, you referenced in your redirect the  
12 answer at line -- begins at Line 32?

13 A. Yes.

14 Q. Am I correct the NRC is the body that has  
15 jurisdiction over that trust?

16 A. I believe the trustee has jurisdiction over  
17 those trusts.

18 Q. Those trusts --

19 A. The NRC has jurisdiction that  
20 decommissioning is performed in a safe manner and  
21 there's sufficient monies available for safe  
22 decommissioning of the plants.

1 Q. Do you know whether or not the trust  
2 agreements have to be submitted to the NRC for  
3 approval?

4 A. I think that they do.

5 Q. And they don't have to be submitted to this  
6 Commission for approval; is that correct?

7 A. Under ComEd's proposal?

8 Q. Yes.

9 A. That's correct.

10 JUDGE CASEY: Mr. Townsend.

11 RE CROSS - EXAMINATION

12 BY

13 MR. TOWNSEND:

14 Q. Sticking along the same lines of cross --  
15 recross-examination, you did not present a draft of  
16 the trust agreement to this Commission, did you?

17 A. No. One does not exist yet.

18 Q. So you didn't present any language to amend  
19 the trust agreement, did you?

20 A. Not as of yet, no. We're working on it,  
21 though.

22 Q. Will ratepayers be a party to the trust?

1       A.    I think ratepayers, if this agreement, if  
2   this petition were approved by the Commission as  
3   proposed, I think ratepayers could be a beneficiary  
4   of the trust for the overfunded -- if the last unit  
5   was overfunded at the completion of decommissioning.

6       Q.    Do you know if ratepayers would have any  
7   rights underneath the trust?

8       A.    Again, you're using the term rights and I  
9   just don't know the answer to that.

10      Q.    Do you know if the Illinois Commerce  
11   Commission would be a party to the trust?

12      A.    I don't know.

13      Q.    Have you included ratepayers in any  
14   negotiations with regards to the trust agreements?

15      A.    Which ratepayers?

16      Q.    Edison's ratepayers.

17                Have you included any Edison ratepayers  
18   in negotiations regarding the language that will be  
19   used in the trust agreement?

20      A.    Many of the employees who created the trust  
21   agreement are ratepayers so to that extent the  
22   answer is yes.



1                   But beyond employees of the company, I  
2 would say no.

3       Q.    So there's no ratepayer group that's been  
4 included in any kind of negotiations?

5       A.    Of the trust agreement? No.

6       Q.    You would anticipate that the individual  
7 ratepayers who are involved in drafting those trust  
8 agreements would be looking out for the interests of  
9 Edison above and beyond their own individual  
10 interests; isn't that true?

11      A.    You would think so.

12      Q.    I would. Would you?

13      A.    Yes.

14      MR. TOWNSEND: No further questions.

15      MS. DOSS: I have one question.

16                   RE CROSS - EXAMINATION

17                   BY

18                   MS. DOSS:

19      Q.    In what years did the Commission approve  
20 decommissioning cost estimates less than the NRC  
21 minimum?

22      A.    The NRC minimum calculation has fluctuated

1 based upon a formula, and the NRC has looked at  
2 modifying its formula.

3           And I can't tell you what years it -- the  
4 Commission has approved collections less than the  
5 formula, but it did exist during some years. It  
6 currently does not exist though.

7       MS. DOSS: But you can't tell what -- you can't  
8 tell today -- well, your Honor, I'd ask for him to  
9 submit that information on a data request for what  
10 years that the Commission actually approved an  
11 amount less than the NRC minimum.

12       JUDGE CASEY: I'm trying to recall in  
13 Mr. Rogers' redirect whether or not there was any  
14 discussion of NRC --

15       MS. DOSS: He specifically asked him regarding  
16 whether the Commission standards were more than NRC  
17 or less than.

18           And Mr. Berdelle clarified that and I  
19 just want a data request on the record, and not that  
20 it will be submitted as an exhibit, but to find out  
21 what years the Commission actually approved  
22 decommissioning cost collections less than the NRC

1 minimum.

2 JUDGE HILLIARD: Wasn't that information  
3 contained in one of the exhibits?

4 MR. ROGERS: This is -- I take it this is  
5 historical information. I'm not sure I haven't seen  
6 it, but the question was about the ICC requiring  
7 more and the answer had to do with the ICC allows  
8 whatever it allows. It's frequently much less than  
9 the company seeks.

10 That was the gist of the response that I  
11 heard. It was the reason for the question --

12 MS. DOSS: Mr. Berdelle specifically said that  
13 the Commission has approved less than the NRC  
14 minimums in some years.

15 JUDGE HILLIARD: I seem to recall that one of the  
16 data requests was -- he was questioned about one of  
17 those and there was a column that had the amount  
18 approved and it had the NRC minimums and sometimes  
19 one was greater, sometimes one was less.

20 Is that responsive to your question or  
21 not?

22 MS. DOSS: If he has already submitted a data

1 request, then if he can refer to that one, that's  
2 fine.

3 MR. ROGERS: I just don't want to commit to do  
4 something that I'm not sure we can, but we'll look.

5 JUDGE CASEY: Let's hold on one second.

6 Off the record.

7 (Whereupon, a discussion was  
8 had off the record.)

9 JUDGE CASEY: Back on the record.

10 While off the record, discussion was had  
11 as to starting time for tomorrow.

12 The hearing will be continued to tomorrow  
13 morning at 9:30 a.m.

14 There was also a discussion had as to  
15 witness list and the order in which they would  
16 testify tomorrow. This matter is continued until  
17 tomorrow morning.

18 (Whereupon, further proceedings in  
19 the above-entitled matter were  
20 continued to August 29, 2000, at  
21 9:30 a.m.)

22